SYNOPSIS

The instant Special Leave Petition (SLP) under Article 136 of the Constitution of India, 1950 ('Constitution,' for short) has been filed against the final order and judgment of the High Court of Allahabad dt. 31/08/2020, erroneously dismissing the **Public Interest Litigation (PIL) No. - 707 of 2020, *Divya Pal Singh & ANR. vs Union of India & ANR.,*** solely relying upon the Judgment of this Hon'ble Court dt. 18/08/2020 in **Writ Petition (Civil) No. 546/2020, *Centre for Public Interest Litigation vs Union of India* ("CPIL")**, while accepting the contention of the Respondents that the "*the present matter is squarely covered by the said decision*".

At the very outset, it is submitted, the Hon'ble High Court fell in serious error of law in accepting the contentions of the Respondents which was nothing but misrepresentation and suppression of material facts of the case and owing to such misapprehension of the scope of the petition, *supra*, which was quite distinct and different, the Hon'ble High Court by the impugned order erroneously dismissed the petitioner's writ petition, without deciding the same on its merits, while overlooking the fact that **the petitioner in the instant case had questioned the constitutional validity, both of the PMCARES Fund and the PMNRF, in the light of the Disaster Management Act, 2005 ('2005 Act,' for short)** and the

constitution of the National Disaster Response Fund (NDRF) by the Central Government thereunder, which is statutory fund created by due process of law**;** whereas**,** there was no such challenge in the matter of ***CPIL****, supra*.

Most Importantly, as would be demonstrated in detail hereinbelow, the subject-matter of the writ petition, giving rise to the instant SLP, is quite different and distinct from the matter in issue in ***CPIL***, *supra*, which is manifest by reason of the fact that this Hon'ble Court in ***CPIL***was neither called upon, nor has it proceeded to examine and adjudicate the legal validity of the Public Charitable Trust, i.e., the PMCARES Fund, so created by the Hon'ble Prime Minister together with other public functionaries at the helm of affairs of the Central Government, to collect donations in view of the Covid-19 pandemic, despite the Prime Minister being the *ex-officio* Chairperson of the National Disaster Management Authority **('NDMA')**[1] **–** which controls the NDRF.

THIS HON'BLE COURT IN *CPIL* (*SUPRA*) WAS NOT AT ALL CONCERNED WITH THE VALIDITY/ILLEGALITY OF THE PMCARES FUND, WHICH IS BEING RAISED IN THE PRESENT PROCEEDINGS FOR THE FIRST TIME:

[1] Section 3(2)(a) of the 2005 Act, quoted *infra*.

The Hon'ble High Court failed to appreciate that this Hon'ble Court in ***CPIL*** (*supra*) was not at all concerned with the validity/illegality of the PMCARES fund, which is being raised in the present proceedings for the first time. As stated earlier, it is submitted that the Petitioner in the present proceedings has questioned the very legality/validity of the PMCARES Fund, together with the PMNRF, in the light of the provisions of the 2005 Act.

Significantly, insofar as the publication and disclosure of the details of accounts, expenditure and activities of the PMCARES Fund to the public, as regards the money collected therein, as well as the prayer to direct the Central Government to transfer the collected money from the PMCARES Fund and the PMNRF to the NDRF, is concerned, the same is consequential and necessary, because if this Hon'ble Court were to allow the main relief sought for herein and declare that the PMCARES Fund and the PMNRF is illegal, invalid and redundant in view of the provisions of the 2005 Act, then obviously the huge amount of money collected in the said Funds by way of contributions, etc., cannot be suspended in a vacuum, but rather incidentally and imperatively, ought to be transferred to the statutory Fund, i.e., NDRF, created under the 2005 Act. Thus, as regards the said relief, the judgment of this Hon'ble Court in ***CPIL***, *supra*, is irrelevant and of no moment or consequence.

Importantly, the reliefs claimed by the Petitioners in ***CPIL***, *supra*, have been duly noted in Para 10 of the judgment and the same is quoted hereinbelow for the convenience of this Hon'ble Court: –

> "**10.** This writ petition filed as a public interest litigation has been filed in the wake of Covid-19 pandemic, seeking direction to the Union of India to prepare, notify and implement a National Plan Under Section 11 read with Section 10 of the Act, 2005 to deal with current pandemic (Covid-19) and to lay down minimum standards of relief Under Section 12 of the Act, 2005 to be provided to persons affected with COVID-19. Petitioners have also sought for directions to utilize National Disaster Response Fund (NDRF) for the purposes of providing assistance in the fight against COVID-19 and all the contributions/grants from individuals/institutions be credited in NDRF and not to PM CARES Fund and all funds collected in PM CARES Fund till date should be directed to be transferred to NDRF. It is useful to note the specific prayers (a) to (c) made in the writ petition:
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> a. Issue a writ, order or direction to the Union of India to prepare, notify and implement a National Plan Under Section 11 read with Section 10 of the Disaster Management Act, 2005 to deal with the ongoing COVID-19 pandemic;
> b. Issue a writ, order or direction to the Union of India to lay down minimum standards of relief, Under Section 12 of the Disaster Management Act, 2005, to be provided to persons affected by the COVID-19 virus, as well as by the resultant national lockdown;
> 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 GOVID-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;"

The Petitioners' case in ***CPIL***, *supra*, has further been summarized by this Hon'ble Court in Paras 12 and 13 of the judgment and the same read, as follows: –

"**12.** Petitioner's case in the writ petition is that the National Plan uploaded on the website of National Disaster Management Authority of the year 2019 does not deal with situations arising out of the current pandemic and has no mention of measures like lockdown, containment zones, social distancing etc. The Central Government has notified COVID-19 as a "disaster" under Act, 2005 and has issued series of notifications to contain the instant pandemic. Petitioner pleads that Centre need to prepare a well-drawn National Plan to deal with instant pandemic and the same need to be prepared after due consultation with the State Government and experts. Petitioner further pleads that Centre should come up with detailed guidelines recommending the minimum standards of relief to be provided in the relief camps in relation to shelter, food, drinking water, medical cover and sanitation, in absence of which, shelter homes and relief camps are susceptible of becoming hotbeds for the spread of COVID-19 infection. Petitioner pleads that Centre should come up with detailed guidelines Under Section 12(ii) and (iii) of the Act, 2005 recommending special provisions to be made for widows and orphans and ex gratia to be provided to the kith and kin of those losing life not just because of COVID-19 infection but also due to harsh lockdown restrictions.

13. The Petitioner's case further is that the grants/contributions by individuals and institutions should be credited into the National Disaster Response Fund (NDRF) Under Section 46 of the Act, 2005 and NDRF should be utilized for meeting the ongoing COVID-19 crisis. All the contributions made by the individuals and institutions in relation to COVID-19 are being credited into the PM CARES Fund and not in NDRF, which is clear violation of Section 46 of the Act, 2005. The NDRF is

subject to CAG Audit and PM CARES Fund is not subject to CAG Audit. Petitioner's case further is that the Centre may be directed to utilize NDRF for the purpose of drawing assistance to fight against COVID-19 and all the contributions/grants from individuals and institutions 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."

Thereafter, this Hon'ble Court records the issues that arose for consideration in ***CPIL***, *supra*, in Para 21 and the same reads as follows:

"21. From the submissions of the learned Counsel for the parties and the pleadings on record, following questions arise for consideration in this writ petition:

I) Whether the Union of India Under Section 11 of Act, 2005, is obliged to prepare, notify and implement a National Disaster Management Plan specifically for pandemic COVID-19 irrespective of National Disaster Management Plan notified in November, 2019?

II) Whether the Union of India is obliged to lay down the minimum standards of relief Under Section 12 of Act, 2005, for COVID-19 irrespective of earlier guidelines issued Under Section 12 of the Act, 2005 laying down the minimum standards of relief?

III) Whether Union of India is obliged to utilise National Disaster Response Fund created Under Section 46 of the Act for the purpose of providing assistance in the fight of COVID-19?

IV) Whether all the contributions/grants from individuals and institutions should be credited to the NDRF in terms of Section 46(1) (b) of the Act rather than to PM CARES Fund?

V) Whether all the funds collected in the PM CARES Fund till date be directed to be transferred to the NDRF?

From the above, it is crystal clear that the matter relating to the legality/validity of the PMCARES Fund and the PMNRF was never before this Hon'ble Court in ***CPIL*****,** *supra*, and the said issue has been raised before this Court in the instant proceedings, for the very first time.

Thus, it is picturesque that the ambit, scope and reach of the instant SLP is manifestly quite different and distinct from that of the matter in ***CPIL***, *supra*, inasmuch as, the instant SLP, *inter alia*, impugns the legal validity of the PMCARES Fund (including that of the PMNRF) and the powers of its authors in creating the same, along with the other consequential, incidental and related matters, concerning transparency and accountability. Hence, the Hon'ble High Court ought to have adjudicated the Petitioner's Writ Petition on its merits, instead of dismissing the same in the manner as stated earlier.

THE COMPELLING NEED FOR TRANSPARENCY AND ACCOUNTABILITY IN THE AFFAIRS OF PMCARES FUND, AND MATERIAL SUPPRESSION AND CONCEALMENT OF FACTS BY THE CENTRAL GOVERNMENT IN *CPIL* (*SUPRA*):

It is significant to state that the Citizen's Right to Know and utmost transparency, in governmental affairs, is the hallmark and touchstone of a true "Democracy". The ideals of Democracy can never be realized, unless there is transparency, accountability and responsiveness in the affairs of governance. The citizen's right to information is increasingly being recognized as an important mechanism to promote openness, transparency and accountability in the affairs of the State.

Relying upon the Central Government's affidavit, this Hon'ble Court in ***CPIL***, *supra*, observed that the "*PMCARES Fund consists entirely of voluntary contributions from individuals/organizations and does not get any budgetary support. No Government money is credited in the PM CARES Fund"*[2]and further reiterated the same holding that *"The Trust does not receive any budgetary support or any Government money."*[3] However, it is a matter of great pity that this Hon'ble Court was misled by the Central Government into making the said observations, by blatantly lying, concealing and supressing the material fact(s) that an ocean of public money is surreptitiously being poured into the PMCARES Fund by the Government ministries, agencies and instrumentalities, as detailed below.

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[2] Para 59 of the judgment in ***CPIL.***
[3] Para 69, *Ibid.*

Undeniably, the PM CARES Fund has been registered as a Public Charitable Trust under the Registration Act, 1908 in New Delhi on 27th March, 2020, and has a Bank Account in the State Bank of India, Main Branch, New Delhi with the following details: –

Name of Account: PM CARES
Account Number: 2121PM20202
IFSC Code: SBIN0000691
UPI : pmcares@sbi

Importantly, as stated above, it has recently come to light that unimaginable and unfathomable amounts of public money is being pumped unabatedly everyday, into the coffers of the said Fund, **by way of contributions from various Government Ministries, its Departments and Agencies**, etc., among others, money from Direct Taxes, Indirect Taxes, Election Commission of India, Ministry of Corporate Affairs, Ministry of Agriculture and Farmers Welfare, Ministry of Labour and Employment, Ministry of Culture, Ministry of External Affairs, Dept. of Expenditure, Dept. of Revenue, Ministry of IT, Ministry of Law and Justice, Ministry of I&B, etc., is being poured into the PMCARES Fund, to name a few. Shockingly, the money even from Government-controlled funds such as 'Assistance related to Bhopal Gas Leak Disaster' meant for the victims of the Bhopal Gas Tragedy, has not been spared and is also being drained into the said Fund.

The data available on the government website of **Public Financial Management System (PFMS),**[4] (accessible at: **https://www.pfms.nic.in/static/NewLayoutCommonContent.aspx?RequestPagename=static/KnowYourPayment_new.aspx**) reveals that by way of contributions by the Government itself, everyday money to the tune of Lakhs and Lakhs of Rupees from various Government Ministries, Departments, Funds and Agencies (abovenamed) are being pumped into the bank account of the PM CARES Fund, which is by nature non-transparent, opaque and unaccountable and what is more, beyond the purview of the RTI Act. All such money is public money belonging to the taxpayers' and citizens of India, meant to be used with utmost fairness, transparency and accountability. As of 06th March, 2021, fathomless oceans of money have secretively been poured into the PM CARES Fund, starting from 4th February, 2020, even prior to the official announcement/declaration of the creation of the Fund, on 28th March, 2020.[5]

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[4] A web-based online software application developed and implemented by the **Controller General of Accounts (CGA), Department of Expenditure, Ministry of Finance, Government of India**, started during 2009 with the objective of tracking funds released under all Plan schemes of Government of India, and real time reporting of expenditure at all levels of Programme implementation and direct payment to beneficiaries under all Schemes. [**https://www.pfms.nic.in/**]

[5] https://pib.gov.in/PressReleseDetailm.aspx?PRID=1608851

Most importantly, the list of contributions by various Government Agencies into the PM CARES Fund, runs into almost 4000 pages as available on 06th March, 2021. The contribution records being extremely voluminous are not being annexed herewith, however, the same has been uploaded on Google Drive for convenience and easy access and is available to view and download at the following link: **https://drive.google.com/file/d/18HpDxpzCQoCkcRdvzql0-sD1zz8qbKzC/view?usp=sharing**.[6]

THE PMCARES FUND IS BEYOND THE PURVIEW OF RTI ACT, AND UNAUDITED BY THE CAG

Despite the above, it is astounding that the PM CARES Fund is totally non-transparent, opaque, unaccountable, beyond the purview of RTI Act, unaudited by the CAG and completely hidden from public view and scrutiny, in a brutal assault on the democratic soul and spirit of the Constitution of India and in teeth of the fundamental rights of the citizens guaranteed under Article 14, 19 and 21 of the Constitution. The public has absolutely no clue about the incalculable amounts of money secretively,

[6] Notably, as of now, the access of the public generally has been restricted as to the PFMS website, as regards the viewing and downloading of the data relating to the Governmental contributions to the PMCARES Fund. The same raises serious apprehensions in the mind of the petitioner as to the intents and purposes behind the PMCARES Fund.

unauthorizedly and unlawfully being pumped into the PMCARES Fund everyday, neither have the people any inkling of where and how such money is being used/spent.

Apart from above, it is worth recording that there is no data or proof of the voluntary donations available anywhere, which may be manifold of the involuntary ones.

In the above context, it is interesting to note that on one hand, the Trust-Deed of the PMCARES Fund in Para 5.3 lays down that the Trust is neither intended to be, nor is owned, controlled or substantially financed by any Government or any instrumentality thereof. However, the same is completely belied by the fact that everyday, incalculable sums of money are being pumped into the PMCARES Fund from various Ministries, Agencies and Departments of the Government, as detailed hereinbefore. This shows that the intention behind the creation of this non-statutory Trust (PMCARES) by those in the helm of affairs of the Central Government, by the ordinary/registration route instead of by a legislation, while side-lining, bypassing and substituting the statutory NDRF and hoodwinking the 2005 Act, is not at all fair.

For convenience and ready reference, the relevant portion of the Para 5.3 from the Trust-Deed of the PMCARES Fund, is gainfully excerpted as follows:

> "**5.3** …This Trust is not created by or under the Constitution of India or by any law made by the Parliament or by any State Legislature. **This Trust is neither intended to be or is in fact owned, controlled or substantially financed by any Government or any instrumentality of the Government.** There is no control of either the Central Government or any State Government/s, either direct or indirect, in functioning of the Trust in any manner whatsoever. The composition of the Board of Trustees consisting of holders of public office *ex-officio* is merely for administrative convenience and smooth succession to the trusteeship and is neither intended to be or in fact result into any governmental control in the functioning of the Trust in any manner whatsoever."

What is more, the Government has granted a 100% exemption from payment of Income Tax, under Section 10(23C)(i) of the Income Tax Act, 1961, to such income contributed by an Income Tax payee to the credit of the PMCARES Fund. The money so contributed to the said funds, which otherwise would have gone directly to the public exchequer, by means of payment of Income Tax, is instead reverting to the PMCARES Fund, which in effect, amounts to the payment by the Government to the PMCARES Fund, through an Income Tax payee. Hence, the PMCARES Fund is no less than a Government trust, being run on Government money.

This Hon'ble Court in **Raj Narain v. State of U.P.,**[7]has observed thatthe people of this country have a right to know every public act,

[7] (1975) 3 SCR 360

everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The relevant portion is extracted hereunder for convenience:

> "In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can but few secrets. The people of this country have a right to know every public act, everything, that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security to cover with veil secrecy the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption."
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> (Emphasis Supplied)

It is submitted, that the creation of funds such as the PMCARES *sans* transparency and accountability and treating them as 'private' trusts, exempting them from public scrutiny (as under the RTI Act) and accountability is unethical, immoral, undemocratic, bad in both law and fact, and unconstitutional. It is submitted that PMNRF and PMCARES being public trusts, both run and controlled by the Government, entrusted with the task of providing immediate relief from

natural calamities, major accidents, serious ailments, riot, etc., should adopt utmost transparency and accountability, in that, being audited by the CAG and be subject to disclosure of their entire information, about their transactions, activities, expenditure, etc., under the letter and spirit of the Right To Information (RTI) Act, 2005.[8]

The Hon'ble High Court of Delhi in **W.P.(C) 3897/2012,*Aseem Takyar v. Prime Minister National Relief Fund*,** has held that the Prime Minister's National Relief Fund (PMNRF) is a 'public authority' within the ambit of Section 2(h) of the RTI Act, 2005. The aforesaid judgment was assailed before the Division Bench in **LPA 231/2016** in ***Prime Minister's National Relief Fund v. Aseem Takyar,*** which is still pending consideration before the Hon'ble High Court in view of the split of opinion among the Division Bench.

It is submitted that the PMNRF and PMCARES, both, are pubic authorities under Section 2(h) of the RTI Act, 2005. This Hon'ble Court in ***D.A.V. College Trust & Management Society v. Director of Public Instructions,***[9] tasked with deciding the applicability of the RTI Act to a body not constituted under an Act or Notification made by the Government, applying the principle of purposive construction, in para 17 categorically held thus:

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[8] Section 4 of RTI Act
[9] (2019) 9 SCC 185

> **"17.** We have no doubt in our mind that the bodies and NGOs mentioned in sub-clauses (*i*) and (*ii*) in the second part of the definition are in addition to the four categories mentioned in clauses (*a*) to (*d*). Clauses (*a*) to (*d*) cover only those bodies, etc., which have been established or constituted in the four manners prescribed therein. By adding an inclusive clause in the definition, Parliament intended to add two more categories, the first being in sub-clause (*i*), which relates to bodies which are owned, controlled or substantially financed by the appropriate Government. These can be bodies which may not have been constituted by or under the Constitution, by an Act of Parliament or State Legislature or by a notification. **Any body which is owned, controlled or substantially financed by the Government, would be a public authority**."
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> (Emphasis Supplied)

In addition to above, the Government in a democratic setup, such as ours, cannot be secretive in its affairs and dealings, and by not making the details of the PM-CARES Fund public will be a grave miscarriage of justice and a crowning blow to the notion of a free, open, transparent and democratic society, that is India.

It is rightly said by the American investigative journalist, popularly known as Bob Woodward that "Democracy dies in darkness" and in the words of the American jurist, Louis D. Brandeis "Sunlight is the best disinfectant," and also the pervading ethos of all the democratic societies around the world, point to openness and transparency as the edifice upon which true democracies are founded. Further, the public at large has the

fundamental Right to Know under Article 21 of the Constitution of India, and deserve to know the accounts, activities and expenditure of a fund, muchless one in which they have generously donated during the most testing times the world has ever seen, at the call of the Prime Minister. Thus, in the interest of a free and fair democratic society and the interests of justice, all the details of the PM-CARES fund deserve to be made public.

In view of the above, it is crystal clear that the impugned order deserves to be set aside and the instant matter deserves to be heard on its merits, as demonstrably, the ***CPIL*** judgment and the observations made therein were the result of concealment of facts, material suppression and fraud being played upon this Hon'ble Court by the Central Government.

THE PMNRF AND THE PM-CARES FUND ARE BOTH UNCONSTITUTIONAL AND VOID:

Notably, prior to the 2005 Act, there was the Prime Minister National Relief Fund (PMNRF), constituted in the pre-Constitutional (and pre-2005 Act) era, as far as back as on 24/01/1948, to deal with disastrous situations when there was neither a law, nor any pre-existing statutory fund.

Parliament enacted the Disaster Management Act, 2005 ("2005 Act"), laying down thereunder, a provision for the creation of a statutory public trust, i.e., the 'National Disaster Response Fund (NDRF)' by the Central Government under Section 46 of the said Act. Accordingly, the statutory trust as such was created, covering the field of the PMNRF. Thus, the PMNRF lost its utility, necessity and efficacy and became otiose and redundant due to its clash of interests with that of the NDRF. However, the said fund is still in currency.

The COVID-19 pandemic was declared a 'notified disaster' under the 2005 Act by the Government of India as evinced by the Letter No. 33-4/2020-NDM-I of the Ministry of Home Affairs, Disaster Management Division addressed to the Chief Secretaries of All States dated 14/03/2020. Significantly, the 2005 Act was used profusely, by the Central Government to cope with the COVID-19 disaster situation as the successive nation-wide lockdowns, numerous guidelines, administrative orders, etc. were issued thereunder, from time to time.

It is pertinent to state, that it is astounding that during the currency of the COVID-19 pandemic in full swing, the Constitutional/Public Functionaries, in the helm of affairs of the Central Government (i.e., *the Prime Minister of India, the "Settlor", together with the Minister of Defence, Minister of Home Affairs and Minister of Finance – constituting*

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the Board of Trustees) on 28/03/2020 created a 'public charitable trust,' under the name and style of "PM-CARES Fund,"

Furthermore, the PMCARES Fund could also not be constituted, legally, in that it strikes upon and leads to a scramble for funds from the same source of income of the NDRF as contemplated under Clauses (a) and (b) of Section 46(1) of the 2005 Act, *infra*., and also otherwise, lest the NDRF along with the 2005 Act become ephemeral and lose their efficacy and existence.

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

It is astounding that the Hon'ble Prime Minister had been seeking donations and promoting the non-statutory 'PM-CARES Fund,' instead of seeking aid and promoting the NDRF, which is the statutory fund under the 2005 Act, needed to combat the COVID-19 crisis, and the same cannot be justified in any view of the matter.

It is submitted that the office of the Prime Minister is not only bound in law, but also in conscience, to carry out the object and mandate of the 2005 Act in its very letter and spirit. Accordingly, the new trust

(PM-CARES), in pith and substance, being contrary to the 2005 Act and the statutory fund (NDRF) thereunder as well, is void *ab initio*.

At this juncture, a panoramic survey on the scheme of the 2005 Act is a must. Accordingly, at the very threshold, the Preamble of the said Act along with other relevant provisions, which are germane to the '*lis*' involved herein, at one place, are excerpted hereunder, for ready reference and easy grasp of the matter(s) in controversy:

> **Preamble:** "An Act to provide for the effective management of disasters and for matters connected therewith or incidental thereto."
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> **Section 2(d) ""disaster"** means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area;"
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> **Section 2(j) ""National Authority"** means the National Disaster Management Authority established under sub-section (1) of section 3;"
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> **Section 3 "Establishment of National Disaster Management Authority.**—(1) With effect from such date as the Central Government may, by notification in the Official Gazette appoint in this behalf, there shall be established for the purposes of this Act, an authority to be known as the National Disaster Management Authority.
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> (2) The National Authority shall consist of the Chairperson and such number of other members, not exceeding nine, as may be prescribed by the Central Government and, unless the rules otherwise provide, the National Authority shall consist of the following:—
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> (a) the Prime Minister of India, who shall be the Chairperson of the National Authority, ex officio;
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> (b) other members, not exceeding nine, to be nominated by the Chairperson of the National Authority.

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

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

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

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

(a) lay down policies on disaster management;

(b) approve the National Plan;

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

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

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

(f) coordinate the enforcement and implementation of the policy and plan for disaster management;

(g) recommend provision of funds for the purpose of mitigation;

(h) provide such support to other countries affected by major disasters as may be determined by the Central Government;

(i) take such other measures for the prevention of disaster, or the mitigation, or preparedness and capacity building for dealing with the threatening disaster situation or disaster as it may consider necessary;

(j) lay down broad policies and guidelines for the functioning of the National Institute of Disaster Management.

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

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

(a) an amount which the Central Government may, after due appropriation made by Parliament by law in this behalf provide;

(b) **any grants that may be made by any person or institution for the purpose of disaster management.**

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

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

(a) the fund to be called the State Disaster Response Fund;

(b) the fund to be called the District Disaster Response Fund;

(c) the fund to be called the State Disaster Mitigation Fund;

(d) the fund to be called the District Disaster Mitigation Fund.

(2) The State Government shall ensure that the funds established—

(i) under clause (a) of sub-section (1) is available to the State Executive Committee;

(ii) under sub-clause (c) of sub-section (1) is available to the State Authority;

(iii) under clauses (b) and (d) of sub-section (1) are available to the District Authority."

Section 53. "Punishment for misappropriation of money or materials, etc.—Whoever, being entrusted with any money or materials, or otherwise being, in custody of, or dominion over, any money or goods, meant for providing relief in any threatening disaster situation or disaster, misappropriates or appropriates for his own use or disposes of such money or materials or any part thereof or wilfully compels any other person so to do, shall on conviction be punishable with imprisonment for a term which may extend to two years, and also with fine."

Section 55. "Offences by Departments of the Government.—(1) Where an offence under this Act has been committed by any Department of the Government, the head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a Department of the Government and it is proved that the offence has been committed with the consent or connivance of, or is attributable

to any neglect on the part of, any officer, other than the head of the Department, such officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

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

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

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

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

It is disquieting that the Hon'ble Prime Minster at the costs of the NDRF, *supra*, and without any lawful justification, has called upon to the public generally and other institutions, giving them rebate under Section 80(G) of Income Tax Act, 1961 to donate charitably to the PM-CARES Fund. However, most importantly, the Section 46(1)(b) of the 2005 Act

provides for donations and grants from public and institutions, to be sought for in the NDRF.

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

THE 2005 ACT IS A COMPLETE CODE IN ITSELF AS REGARDS COMPREHENSIVELY DEALING WITH DISASTERS, INCLUDING THE COLLECTION AND DISBURSEMENT OF FUNDS:

Significantly, from the Preamble of the 2005 Act which states that it is "*an Act to provide for the effective management of disasters and for matters connected therewith or incidental thereto*," and from a bare perusal of the scheme and provisions of the said Act, quoted hereinbefore, it is crystalline that the 2005 Act is a complete code in itself for effectively and comprehensively dealing with disasters (as in the case of the Covid pandemic with is a notified disaster), including the provisions for collection and distribution of funds, through the NDRF, for such purposes.

This Hon'ble Court in a very recent judgment, in **Ficus Pax (P) Ltd. v. Union of India[10] ("Fiscus"),**has emphatically observed that:

> "**The Disaster Management Act, 2005, is a self-contained code and no reliance can be placed on any other law.**

[10] **(2020) 4 SCC 810**

> Further by virtue of Section 72 of the Disaster Management Act, 2005, all other enactments are overridden… .”
>
> (Emphasis Supplied)

From the above, it is manifest that the creation of a separate non-statutory public charitable trust to sideline and hoodwink the statutory NDRF, is arbitrary, illegal, unconstitutional, without any authority of law and in teeth of the scheme and provisions of the 2005 Act, muchless from a conjoint reading of Section 46(1)(b) and Section 53, *supra*, of the said Act.

THE STATUTORY FUND ‘NDRF’ WOULD PREVAIL OVER THE NON-STATUTORY TRUST ‘PMCARES FUND’, BY VIRTUE OF THE OVERRIDING EFFECT OF SECTION 72 OF THE 2005 ACT:

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

Importantly, it is pertinent to mention that all the steps and measures taken by the Government have been under the 2005 Act, including the issuance of the nation-wide lockdowns. It is perturbing, that the Government has exercised powers under the 2005 Act to combat the

COVID-19 disaster, but has substituted the statutory fund/trust, the NDRF, constituted under the said Act, by the PM-CARES, a non-statutory trust/fund, and as such, the same is arbitrary, unwarranted and bad in both fact and law.

This Hon'ble Court itself in para 14 of the judgment in **CPIL**, *supra*, has observed that all efforts to combat the Covid-pandemic disaster were undertaken under the 2005 Act, which may be excerpted as follows:–

> "14. A preliminary counter affidavit has been filed on behalf of the Union of India. In the counter affidavit, the Respondents have questioned the locus of the Petitioner to file this public interest litigation. Counter affidavit questions as to whether there can be a permanent body set up only to file litigation on issues, which the said body subjectively considers to be of "public interest". Counter affidavit pleads that National Disaster Management Plan as per Section 11 is already in place and relevant portion of National Disaster Management Plan - November, 2019 has been annexed as Annexure R-1 to the counter affidavit. Counter affidavit pleads that Act, 2005 provides for a broad framework in terms of the response to be provided in pursuance to a National Plan in case of any disaster. Counter affidavit pleads that National Plan does not and cannot contain step by step instructions or specific instructions for the day to day management by Government agencies in the situation of any particular and unforeseen disaster. National Plan is not a document that contains the microscopic details as to

the day to day management of the issues arising out of different disasters. National Disaster Management Authority has issued various orders from time to time to take effective measures found required at the relevant point of time to contain the spread of COVID-19 in the country. The Chairperson of National Executive Committee has issued several guidelines from time to time. National Disaster Management Authority has, in order to create preparedness with regard to any contingent biological disaster, has framed the "National Disaster Management Guidelines Management of Biological Disasters". National Disaster Management Authority has framed broad template for State level and District level for contingency plan for COVID-19.The Nodal Ministry, i.e., Ministry of Health and Family Welfare has issued a "Cluster Containment Plan for COVID-19" on 02.03.2020, which was further updated on 16.05.2020. Further instructions have been issued from time to time including the guidance documents. The Ministry of Health and Family Welfare has approved the India COVID-19 Emergency Response and Health Systems Preparedness Package of Rs. 15000 crores, which seeks to support States/Union Territories in various aspects of management of the COVID Pandemic and provides support for establishment of COVID dedicated facilities for treatment of COVID-19 cases including for critical care, enhancement in testing capacities, engagement and training of necessary human resources and procurement of essential equipment and protective gear for the health care personnel engaged in COVID-19 duties etc. With regard to minimum standards of

> relief, the counter affidavit refers and relies on guidelines on Minimum Standards of Relief under Section 12, which has been brought on record as Annexure R-7. The Counter affidavit also outlines various steps taken by Health Ministry as well as the Government of India."
>
> (Emphasis Supplied)

In the above context, in addition to **Fiscus**, *supra*, this Hon'ble Court in **Praneet K. vs. UGC,**[11]has unequivocally observed that the Section 72 beings with a non-obstante clause and the scheme of the 2005 Act is such that it gives primacy, priority to the actions and measures taken under the Act over inconsistency in any other law for the time being in force, as follows:

> **"99.** The Disaster Management Act, 2005 empowers the State Disaster Management Authority as well as the State Government to take decision for prevention and mitigation of a disaster and the action taken by the authorities under the Disaster Management Act have been given overriding effect to achieve the purpose and object of the Act. In case of a disaster the priority of all authorities under the Disaster Management Act is to immediately combat the disaster and contain it to save human life. Saving of life of human being is given paramount importance and the Act, 2005 gives primacy, priority to the actions and measures taken under

[11]**(2020) SCC Online SC 688**

the Act over inconsistency in any other law for the time being in force. Section 72 begins with non obstante clause. This Court in **State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772** in paragraph 63 laid down following:

> "63. It is well known that a non obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions."

100. The Kerala High Court had occasion to consider Section 72 of the Disaster Management Act in reference to another Central Act that is Land Acquisition Act. The Division Bench of the Kerala High Court (of which one of us Justice Ashok Bhushan was also a member) laid down following in paragraph 69:

> "69. The Disaster Management Act, 2005 is enacted with a definite object. Various powers have been given to the different authorities, including the DDMA to achieve the objects of the Act. Various statutory plans are to be prepared for Disaster Management. In event it is to be accepted that with regard to taking any action with regard to a premises which is in occupation/ possession/ownership of a private person, the authorities have first to draw proceedings under the Land Acquisition Act and then issue any order under the 2005 Act is to defeat the entire purpose and object of the 2005 Act. The legislature being well aware of the legal consequences have already engrafted Section 72 of the Act which gives overriding effect to the provisions of the

> 2005 Act, notwithstanding anything consistent therewith contained in any other law…."
>
> (emphasis added)"

In addition to above, the law is well settled in the day that when a statute provides for something to be done in a particular manner, then it is to be done as such in the manner so prescribed. In the landmark judgment in **Taylor v. Taylor,**[12] followed in the Indian context in **Nazir Ahmad v. King Emperor,**[13]it was held that "*where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden*."

This aforesaid principle has been reiterated and applied by this Hon'ble Court on numerous occasions, including by a three judge Bench of this Court in **State of U.P. v. Singhara Singh,**[14] wherein it was noted that:

> "**8.** The rule adopted in Taylor v. Taylor [(1875) 1 Ch D 426, 431] is well recognised and is founded on sound principle. **Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed.** The principle behind the

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[12]**(1875) 1 Ch. D. 426**
[13]**AIR 1936 PC 253(2)**
[14]**(1964) 4 SCR 485**

rule is that if this were not so, the statutory provision might as well not have been enacted..."

(Emphasis Supplied)

In view of the above, it is clear that the action of the Hon'ble PM (along with other public functionaries in the helm of affairs of the Central Government) as the 'Settlor' of the 'non-statutory' PMCARES Trust meant to bypass the statutory NDRF, when all the measures to deal with the Covid-19 disaster situation have been taken under the 2005 Act, muchless, when the Hon'ble PM himself is the Chairperson of the NDMA (which controls the NDRF), is blatantly corrosive and antithetical to the scheme and provisions of the 2005 Act and in teeth thereof, and as such is without any authority of law, unwarranted, illegal and blatantly arbitrary.

Needless to say, the creation of a separate public trust, i.e., the PM-CARES Fund, by the Constitutional/Public Functionaries in the helm of affairs, under their beck and call, in the name of combating disaster situations, would in effect amount to substituting the statutory fund (NDRF) by a non-statutory trust (PM-CARES), which is uncalled for, unwarranted, arbitrary and illegal and would make the 2005 Act maimed, crippled and ineffective.

Further, the funds being sought and channelized for the pre-2005 Act trust, being the PMNRF, and the newly created 'PMCARES' Trust, would restrict the inlet and flow of funds into the NDRF from the general public and other institutions, and would thus hit hard upon the very source of the funds of the NDRF. Hence, there is a competition and clash of interest between the statutory and non-statutory funds, and in the course of time the NDRF would lose its relevance and worth. Manifestly, the said trusts have trenched on the field of the statutory fund, NDRF, and are as such, redundant and void.

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

It is desirable, indispensable, pragmatic and expedient that the funds collected to cope with the COVID-19 disaster, must not be strewn and scattered under different non-statutory trusts, rather they must be in a statutory consolidated fund, well-guarded by the provisions of law, so as to effectively address the COVID-19 disaster, keeping in view the availability of funds. Although, it is unfortunate and a matter of great pity,

that by its action(s) the Government has rendered the 2005 Act maimed, crippled, unworkable and ineffective.

The funds collected are supposed to be in relation to and for the purposes of coping with the disaster situation, in the public charitable trusts as against the 2005 Act, muchless creating blockade to the flow of funds from the general public and other institutions to the statutory fund NDRF, are void as defeating specific provisions of law by those in the helm of affairs who are also in control of the NDRF. Thus, there is clearly a clash of interest among the non-statutory public charitable trusts on one hand, and the NDRF scheme on the other, and the same is against the interests of the public at large.

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

THE PMCARES AND PMNRF ARE TOTALLY OPAQUE, NON-TRANSPARENT AND UNACCOUNTABLE:

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

Accordingly, Constitutional/public functionaries at the helm of affairs of the Central Government, have no power to constitute such public trusts as may adversely affect the fund/trust, i.e., the NDRF, so constituted by the Central Government under the 2005 Act.

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

NOW COMING TO THE IMPUGNED JUDGMENT/ORDER DT. 31/08/2020 OF THE HON'BLE HIGH COURT:

Importantly, it is submitted that the impugned judgment/order dt. 31/08/2020 of the Hon'ble High Court uses the expression "*Heard learned counsel for the petitioners*," however, as is clear from a bare perusal of the impugned judgment/order that the High Court delimited the scope of arguments only to a limited aspect of the judgment of this Hon'ble Court in ***CPIL*****,** and did not allow the counsel(s) for the petitioner to make any submissions upon the merits of the '*lis*' involved in the petitioner's case. Moreover, the expression "*Heard learned counsel for the petitioners*" has been used in a formal and routine manner, and as a matter of fact, the counsel(s) for the petitioner were afforded no opportunity to make their submissions on the merits of the case.

Further, it is submitted that the Hon'ble High Court in its impugned judgment/order, has relied upon Paragraphs 67, 68 and 69 of the judgement of this Hon'ble Court in ***CPIL*****,** *supra*, as cited by the respondents in support of their contentions, and the High Court has used the expression "*Learned counsel for the petitioners has not been able to rebut the contention so made by the learned counsel for the respondents*," in the concluding paragraphs of its judgment, with reference to the same. For convenience and ready reference, the paragraphs 67, 68 and 69 of the

judgment of this Hon'ble Court in ***CPIL***, may gainfully be excerpted as follows:

> *"67. The PM CARES Fund is a public charitable trust and is not a Government fund. The charitable trusts are public trusts. Black's Law Dictionary, Tenth Edition defines charitable trust in following words:*
>
> > *"**charitable trust.** A trust created to benefit a specific charity, specific charities, or the general public rather than a private individual or entity. Charitable trusts are often eligible for favorable tax treatment."*
>
> *68. The mere fact that administration of the Trust is vested in trustees, i.e., a group of people, will not itself take away the public character of the Trust as has been laid down in **Mulla Gulam Ali & Safiabai D. Trust Vs. Deelip Kumar & Co., (2003) 11 SCC 772**. In paragraph 4, this Court laid down:*
>
> > *"4. The mere fact that the control in respect of the administration of the Trust vested in a group of people will not itself take away the public character of the Trust……."*
>
> *69. The contributions made by individuals and institutions in the PM CARES Fund are to be released for public purpose to fulfill the objective of the trust. 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.** It is not open for the petitioner to question the wisdom of trustees to create PM CARES fund which was constituted with an objective to extend assistance in the wake of public health emergency that is pandemic COVID-19."*

In the above context, as regards the paragraphs 67 and 68, *supra*, it is submitted that the petitioner has no quarrel with the proposition as to

the nature of a 'charitable trust,' as laid down in the said paragraphs in view of the definition given in Black's Law Dictionary and the judgment in ***Mulla Gulam Ali*** (*supra*), but rather has his reservation(s) as regards the nature of the PMCARES Fund, as a 'public charitable trust,' keeping in view the source of money, *inter alia*, from the Government and its instrumentalities. The petitioner is also questioning the power of the Public Functionaries at the helm of affairs of the Central Government to create any 'public charitable trust,' including the PMCARES Fund, otherwise than by way of law.

Importantly, as regards paragraph 69, *supra*, which contains the assertion that "*The trust does not receive any Budgetary support or any Government money*," referring to the PMCARES Fund, it is emphatically submitted that the said assertion is belied by the very fact that an enormous flood of public funds/money from the Government (Ministries, Departments, Funds, Agencies, etc.) and its instrumentalities, as detailed hereinbefore, is relentlessly gushing into the PMCARES Fund.

Obviously, the nature and character of the PMCARES Fund is quite unique, distinct and distinguishable, from those kinds of trusts as the definition in Black's Law Dictionary and the judgment in ***Mulla Gulla Ali*** (*supra*), have covered. The Hon'ble High Court by the impugned judgment/order has fallen in serious error of law in relying upon the judgment of this Hon'ble Court in ***CPIL***, *supra*, while dismissing the

petitioner's writ petition, which rested on a different edifice. Accordingly, the impugned judgment/order of the Hon'ble High is legally flawed and unsustainable.

Significantly, from the above, it is manifest that the impugned judgment/order dt. 31/08/2020, including the judgment of this Hon'ble Court in ***CPIL,*** *supra*, was based on utterly incorrect premises, i.e., **"*The trust does not receive… any Government money*."** It seems that true facts were deliberately concealed from this Hon'ble Court by the Central Government, with regard to the enormous bulk of public funds/money flowing into the PMCARES Fund from the various Ministries, Departments, Funds and Agencies of the Government, as detailed *supra*. In the circumstances, the judgment of this Hon'ble Court in ***CPIL*** is of no moment and consequence to the instant case and deserves to be ignored, and the instant case deserves to be decided on its own merits and the issues involved hereto, being uninfluenced by the judgment in ***CPIL****, supra*.

Furthermore, the petitioner, being well acquainted with the Judgement dated 18/08/2020 of this Hon'ble Court in ***CPIL*****,** *supra*, which seems to be at tangent on the matters of transfer of funds collected in PM-CARES Fund to the NDRF, filed a Supplementary Affidavit dt. 26/08/2020 in the High Court, in advance, before the hearing date of the petition, with a view to delimit the matters in issue in petitioner's Writ Petition, *supra*, vis-à-vis the matter decided by this Hon'ble Court in

CPIL*, *supra, and to clear the confusion, if any, in the said behalf which may do arise during the course of hearing.

It is a travesty of justice, that the High Court, without even considering or taking a note of the said Supplementary Affidavit and without allowing the Petitioner(s), to speak a word and make submissions with regard to the same, erred in law in mechanically dismissing the Writ Petition vide its impugned Order dt. 31/08/2020, without application of its mind, citing the Judgment of this Hon'ble Court, aforesaid, which, as a matter of fact, was of no moment, without hearing the petitioner on merits, and without considering the important materials on record, and issue involved thereto.

In the facts and circumstances of the case and in the light of the submissions adumbrated hereinbefore, it is imperative that this Hon'ble Court may issue a writ, order or direction declaring, both the PMNRF and the PMCARES Fund, as illegal and void.

It is further, expedient and necessary that this Hon'ble Court may direct the Central Government, to make full disclosure of the accounts, activity and expenditure details of the PM-CARES Fund to the public at large, desirably, by publishing the aforesaid details upon the Government website for all to see, and the accounts to be updated regularly**:** And to direct the audit of the PM-CARES Fund to be done by the Comptroller

and Auditor General of India (CAG), in the fitness of the things and in the interests of justice and the public at large.

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

Furthermore, what is of utmost importance is that the money in PMCARES was collected purportedly to undertake support, relief or assistance of any kind relating to a public health emergency, as in the case of Covid-19 which is a notified disaster under or any other kind of emergency, calamity or distress, either man-made or natural, including the creation or upgradation of healthcare or pharmaceutical facilities, other necessary infrastructure, funding relevant research or any other type of support, however, the onset of Second wave and loss of lives of lakhs of people for want of healthcare, medical and pharmaceutical facilities, and suffering and dying from the same shortages as they faced last year (2020), i.e., hospital beds, ICUs, ventilators, oxygen and essential medications, defeating the rights guaranteed under the Constitution,

clearly pointing to the fact that the contributions taken in name of PMCARES Fund were hardly utilized for the upgradation of healthcare, medical or pharmaceutical facilities. In the circumstances, it is incumbent upon this Hon'ble Court as the ***sentinel on the qui vive***, to call for the accounts and records of the PMCARES Fund from the Central Government, and to grant the reliefs as prayed for herein in the larger interest of democracy and the well-being of the public at large.

In these facts and circumstances, the present Petition is filed.

LIST OF DATES

24/01/1948	The Prime Minister National Relief Fund (PMNRF), a public charitable trust, was created on 24/01/1948, in the pre-Constitutional (and pre-2005 Act) era, to deal with disaster situations.
26/01/1950	The Constitution of India, 1950 came into force, whereunder in Entry 10 ("10. *Trust and Trustees"*) of the Concurrent List in the 7th Schedule to the Constitution of India, it provides for creation of Trusts by respective Governments, by enacting a law to that effect. Manifestly, the Entry 10, *supra*, forbids the creation of

any Trust, by the ordinary/registration route, otherwise than by law.

--/--/2005 Remarkably, the Parliament enacted the Disaster Management Act, 2005 ("2005 Act"), laying down thereunder, a provision for the creation of a statutory public trust, i.e., the 'National Disaster Response Fund (NDRF)' by the Central Government. Accordingly, the statutory trust as such was created, covering the field of the PMNRF. Thus, the PMNRF lost its utility, necessity and efficacy and became otiose and redundant due to its clash of interests with that of the NDRF. However, the said fund is still in currency.

14/03/2020 The COVID-19 pandemic was declared a 'notified disaster' under the 2005 Act by the Government of India as evinced by the Letter No. 33-4/2020-NDM-I of the Ministry of Home Affairs, Disaster Management Division addressed to the Chief Secretaries of All the States dated 14/03/2020. A true copy of the Letter dated 14/03/2020 issued by the Ministry of Home Affairs,

Disaster Management Division declaring the Covid-19 Pandemic as a "Notified Disaster" is **ANNEXURE P-1 [Pages 60 to 90]**

24/03/2020 onwards

Significantly, the 2005 Act was used profusely, by the Central Government to cope with the COVID-19 disaster situation as the successive nation-wide lockdowns, numerous guidelines, administrative orders, etc. were issued thereunder, from time to time.

28/03/2020

It is pertinent to state, that it is astounding that during the currency of the COVID-19 pandemic in full swing, the Constitutional Functionaries, in the helm of affairs, of the Central Government (i.e., *the Prime Minister of India, the "Settlor", together with the Minister of Defence, Minister of Home Affairs and Minister of Finance – constituting the Board of Trustees*) on 28/03/2020 created a 'public charitable trust,' completely opaque in nature, beyond the public scrutiny and purview of RTI Act and the 2005 Act, under the name and style of "PM-CARES Fund," by the

process of the general/ordinary/registration route, otherwise than by way of legislation.

Importantly, the Entry 10, *supra*, by its intrinsic and implicit force, prohibits the Constitutional functionaries and/or the Governments from creating any trust, otherwise than by law. Thus, the creation of the PMCARES Fund, *supra*, is not only void *ab initio* but is also adverse to the interests of the NDRF, *supra* (*inter alia*, in terms of the scramble from the same source of funds), which was already in place, covering the field of PM-CARES Fund.

-- The creation of a separate public trust, i.e., the PM-CARES Fund, by the Constitutional Functionaries in the helm of affairs, under their beck and call, in the name of combating disaster situations, would in effect amount to substituting the statutory fund (NDRF) by a non-statutory fund (PM-CARES), which is uncalled for, unwarranted, arbitrary and illegal and would make the 2005 Act maimed, crippled and ineffective.

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19/06/2020 Under the circumstances, the petitioner filed the Writ Petition, being **Public Interest Litigation (PIL) No. - 707 of 2020, *Divya Pal Singh & ANR. vs Union of India & ANR.***, giving rise to the instant SLP, in the High Court of Allahabad, *inter alia*:

> **Assailing** the power of the Constitutional Functionaries in the helm of affairs of the Government, to create a Trust (PMCARES) otherwise than by law, and challenging the legality of both the trusts, being the PMNRF and the PM-CARES Fund, for declaring the said Funds, as illegal and void.
>
> **Along with a prayer**, for a direction to the Central Government to make full disclosure of the accounts, activity and expenditure details of the PM-CARES Fund to the public at large, desirably, by publishing the aforesaid details, upon the Government website for all to see, and the accounts to be updated regularly**: And** also to direct the audit of the PM-CARES Fund to be done by the Comptroller and Auditor General of India (CAG), in the fitness of the things and in the interests of justice and the public at large.
>
> **And, along with a further prayer**, directing the Central Government to transfer/credit the money/funds, collected and contained in the PMNRF and the PM-CARES Fund, to the account of the National Disaster Response Fund (NDRF).

A true copy of the Writ Petition in Public Interest Litigation (PIL) No. - 707 of 2020, *Divya Pal Singh &*

ANR. vs Union of India & ANR., filed by the petitioner in the High Court of Allahabad dated 19.06.2020 is **ANNEXURE P-2 [Pages 91 to 101]**

18/08/2020 During the pendency of the petitioner's writ petition in the Hon'ble High Court of Allahabad, this Hon'ble Court passed a Judgment on 18/08/2020 in a Writ Petition under Article 32 of the Constitution of India, being **W. P. (C) No. 546/2020, *Centre for Public Interest Litigation v. Union of India ("CPIL")*,** dismissing the same on the merits of the said case, which rested on the premises quite different and distinct from the premises in the petitioner's writ petition, and was primarily designed for the transfer of money collected in the PMCARES Fund to the NDRF, *inter alia*, imputing the motive behind the creation of the trust, without any other valid reason.

26/08/2020 In the wake of the Judgement of this Hon'ble Court, *supra*, the petitioner filed a Supplementary Affidavit dated 26/08/2020, in the High Court, distinguishing the matter contemplated in ***CPIL*,** *supra*, as aforesaid, with

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his Writ Petition, wherefrom the instant SLP arises. A true copy of the Supplementary Affidavit of the petitioner dated 26/08/2020 in Public Interest Litigation (PIL) No. - 707 of 2020, filed in the High Court of Judicature at Allahabad is **ANNEXURE P-3 [Pages 102 to 104]**

31/08/2020 When the petitioner's writ petition came for hearing on 31/08/2020, the Hon'ble High Court committed a palpable error of law in dismissing the same vide the impugned Order dt. 31/08/2020, solely relying upon the Judgment of this Hon'ble Court in ***CPIL***, *supra*, while accepting the contention of the Respondents that the "*the present matter is squarely covered by the said decision,*" which was of no moment or consequence, without considering the merits of the case and the important materials, i.e., Supplementary Affidavit, above referred to, placed on record.

21/06/2021 Hence, the instant SLP.

Court No. - 32

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 707 of 2020

Petitioner :- Divya Pal Singh And Another
Respondent :- Union Of India And Another
Counsel for Petitioner :- Shashwat Anand,Ankur Azad,Devesh Saxena
Counsel for Respondent :- A.S.G.I.,Gyan Prakash(Senior Adv.)

Hon'ble Shashi Kant Gupta,J.
Hon'ble Shamim Ahmed,J.

Heard learned counsel for the petitioners and Sri S.P. Singh, learned senior counsel assisted by Sri Ajay Singh, learned counsel for the respondents.

At the very outset, learned counsel for the respondents while referring to the judgment of the Hon'ble Apex Court rendered in **Writ Petition (Civil) No.546 of 2020, Centre for Public Interest Litigation versus Union of India,** decided on 18.8.2020, submitted that the dispute involved in the present matter is squarely covered by the said decision. Learned counsel for the respondents in support of his contention has relied upon the observations made by the Hon'ble Apex Court in paragraph 67, 68 and 69 of the aforesaid judgment, which runs as follows:

"67. The PM CARES Fund is a public charitable trust and is not a Government fund. The charitable trusts are public trusts. Black's Law Dictionary, Tenth Edition defines charitable trust in following words:

> *"**charitable trust.** A trust created to benefit a specific charity, specific charities, or the general public rather than a private individual or entity. Charitable trusts are often eligible for favorable tax treatment."*

*68. The mere fact that administration of the Trust is vested in trustees, i.e., a group of people, will not itself take away the public character of the Trust as has been laid down in **Mulla Gulam Ali & Safiabai D. Trust Vs. Deelip Kumar & Co., (2003) 11 SCC 772.** In paragraph 4, this Court laid down:*

> *"4. The mere fact that the control in respect of the administration of the Trust vested in a group of people will not itself take away the public character of the Trust.……"*

69. The contributions made by individuals and institutions in the PM CARES Fund are to be released for public purpose to fulfill the objective of the trust. 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. It is not open for the petitioner to question the wisdom of trustees to create PM CARES fund which was constituted with an objective to extend assistance in the wake of public health emergency that is pandemic COVID-19."

In the aforesaid judgment, the Hon'ble Apex Court has made an observation that the funds collected in the PM CARES Fund are entirely different funds which are funds of a public charitable trust and there is no occasion for issuing

any direction to transfer the said funds to the NDRF.

The Hon'ble Apex Court has further observed that the NDRF and PM CARES Fund are two entirely different funds with different object and purpose and 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; (ii) 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, 2005. The contribution by any person or by any institution in PM CARES Fund is voluntary and it is open for any person or institution to make contribution to the PM CARES Fund.

Learned counsel for the petitioners has not been able to rebut the contention so made by the learned counsel for the respondents.

In view of the above, we do not see any justification to interfere in the matter.

The writ petition is accordingly **dismissed.**

Order Date :- 31.8.2020
SP

//TRUE COPY//

IN THE SUPREME COURT OF INDIA
[S.C.R., ORDER XXI, RULE 3(1)(A)]

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2021

(UNDER ARTICLE 136 OF CONSTITUTION OF INDIA)

[ARISING FROM THE IMPUGNED JUDGMENT AND FINAL ORDER DATED 31/08/2020 OF THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD IN CIVIL MISC. WRIT PETITION (PIL) NO. 707/2020]

BETWEEN:

Court	**Position of Parties**	
	High Court	**Supreme Court**
	IN THE COURT FROM WHOSE ORDER THIS PETITION ARISES	IN THIS COURT
1. Divya Pal Singh,	**Petitioner No. 1**	**Petitioner**
	AND	
1. Union of India, through the Secretary, Ministry of Home Affairs, North Block, Central Secretariat, New Delhi – 110001.	**Respondent No. 1**	**Contesting Respondent No.1**
2. National Disaster Management Authority, Through its Secretary, Government of India, NDMA Bhawan, A-1, Safdarjung Enclave, New Delhi – 110029.	**Respondent No. 2**	**Contesting Respondent No.2**
3. Anubhav Singh,	**Petitioner No. 2**	**Proforma Respondent No.3**

TO,
THE HON'BLE THE CHIEF JUSTICE OF INDIA
AND HIS LORDSHIP'S COMPANION JUSTICES OF
THE HON'BLE SUPREME COURT OF INDIA.

THE HUMBLE PETITION OF THE PETITONERS ABOVE-NAMED,

MOST RESPECTFULLY SHOWETH:

1. That, this Special Leave Petition under Article 136 of the Constitution is being filed by the petitioner herein, against the final order and judgment of the Hon'ble High Court of Judicature at Allahabad dated 31/08/2020, dismissing **Public Interest Litigation (PIL) No. - 707 of 2020, *Divya Pal Singh & ANR. vs Union of India & ANR.,*** solely relying upon the Judgment of this Hon'ble Court dt. 18/08/2020 in **Writ Petition (Civil) No. 546/2020, *Centre for Public Interest Litigation vs Union of India ("CPIL"),*** while accepting the contention of the Respondents that the "*the present matter is squarely covered by the said decision,*" which was of no moment and inapplicable to the instant case, inasmuch as the '*lis*' involved thereto was quite distinct and distinguishable.

2. QUESTIONS OF LAW:

That, the instant Special Leave Petition raises the following substantial questions of law of general/public importance, not decided

earlier by this Hon'ble Court and as such requiring consideration by this Hon'ble Court:

(A) WHETHER, both the **PMNRF** (*constituted in the pre-Constitutional era, as far as back as on 24/01/1948, to deal with disastrous situations when there was neither a law, nor any statutory fund already constituted*) lost its efficacy and relevance and became redundant with the commencement of the 2005 Act, pregnant with the statutory fund thereunder, being the NDRF, in view of the Section 72 of the said Act?

(B) WHETHER, the Central Government has the power to constitute a public charitable trust, here being the **PM-CARES Fund** (*constituted post-2005 Act by the Central Government on 28/03/2020, in the aftermath of the COVID-19 disaster outbreak*), **otherwise than by law**, in teeth of the Entry 10 of the Concurrent List in the Seventh Schedule to the Constitution of India, 1950?

(C) WHETHER, the field of the PM-CARES Fund was already covered by the 2005-Act with the constitution of NDRF constituted thereunder, and as such the PM-CARES Fund is repugnant, from its very inception, to the 2005 Act and the NDRF, and hence, illegal, arbitrary and void, as it militates against the provisions of Article 14 of the Constitution of India, 1950?

(D) WHETHER, in view of the above, the Central Government is under obligation to make full disclosure of the statements of accounts, activity and expenditure details of the PM-CARES Fund to the public at large, desirably, by publishing the aforesaid details upon the Government website for all to see, and the accounts to be updated regularly, from time to time**:** And to direct the audit of the PM-CARES Fund to be done by the Comptroller and Auditor General of India (CAG)?

(E) WHETHER, it is just and proper for the Prime Minister (PM), who is Chairperson of the National Disaster Management Authority (NDMA; National Authority under S. 3 of 2005 Act) which helms and controls the NDRF, to promote and call for funds for the non-statutory PM-CARES Fund, instead of the statutory NDRF, thereby, in effect, subduing the statutory fund (NDRF) by the non-statutory fund (PM-CARES Fund), and consequently, giving rise to clash of interests between both the said funds and breaking out a clash and scramble for money/funds from the same source as contemplated under Section 46(1) of the 2005 Act, and thereby, making the NDRF, in effect, illusory and thus, weakening, maiming and crippling the 2005 Act?

(F) WHETHER, in view of the above, the funds lying in the credit of both the PMNRF and the PM-CARES Fund, both in disguise a clog to the flow of funds into the NDRF, deserve to be transferred/credited to the account at the credit of the NDRF, which is the statutory fund, transparent in all respects,

while, the said funds are opaque and are unavailable for the access of the public generally, for whose benefit they are purported to be meant for?

(G) WHETHER, the PMCARES Fund is a "public authority" within the meaning of Section 2(h) of the RTI Act,[1] given the tsunami of public money being deluged to its credits?

(H) WHETHER, the constitution/creation of a Trust, otherwise than by way of a law, is permissible, by those holding constitutional/public offices in the Government, muchless, when there is already a statutory fund for the same purpose?

(I) WHETHER, the PMCARES Fund holds the same nature and character, as that of an ordinary public charitable trust as defined in Black's Law Dictionary and judgment of ***Mulla Gulam Ali***,[2] or does it have some distinct, unique and distinguishable character, which the Hon'ble High Court, failed to comprehend?

(J) WHETHER, the PMCARES Fund is a Government Fund?

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[1] **2(h). "public authority"** means any authority or body or institution of self-government established or constituted—
(a) by or under the Constitution;
(b) by any other law made by Parliament;
(c) by any other law made by State Legislature;
(d) by notification issued or order made by the appropriate Government, and includes any—
(i) **body owned, controlled or substantially financed;**
ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government."

[2] ***Mulla Gulam Ali & Safiabai D. Trust Vs. Deelip Kumar & Co.,* (2003) 11 SCC 772**, paragraph 4.

(K) WHETHER, the Hon'ble High Court was obligated to decide the Writ Petition on its merits and erred in law in dismissing the same without hearing and without considering the merits of the case and the important materials placed on record, i.e., the Supplementary Affidavit (dt. 26/08/2020) of the Petitioner, whereby the material distinction between the petitioner's petition and that of the matter in ***CPIL***, was put forth?

3. DECLARATION IN TERMS OF RULE 4(2):

The petitioner has not filed any other Petition seeking leave to appeal against the impugned judgment and final order dated 31/08/2020 passed by the Hon'ble High Court of Judicature at Allahabad in Public Interest Litigation (PIL) No. - 707 of 2020.

4. DECLARATION IN TERMS OF RULE 6:

The Annexures P-1 to P-3 produced along with this SLP are true and correct copies of the pleadings/documents, which formed part of the record of the case in the Court below against whose order the leave to appeal is sought for in this petition.

5. GROUNDS:

The instant Special Leave to Appeal is sought for, *inter alia*, on the following grounds:

I. Because the Hon'ble High Court by the impugned order has fallen in serious error of law in solely relying upon the Judgment of this Hon'ble Court dt. 18/08/2020 in ***CPIL***,

supra, and accepting the contention of the Respondents that the "*the present matter is squarely covered by the said decision*," owing to misrepresentation and suppression of material facts of the case by the contesting Respondent and the misapprehension of the scope of the petition, *supra*, which was quite distinct and different, and thereby, erroneously dismissing the petitioner's writ petition, without deciding the same on its merits. However the '*lis*' involved in both the petitions, more fully detailed, *infra*, is quite distinct and distinguishable.

II. Because the Hon'ble High Court overlooked the fact, that **the petitioner in the instant case had questioned the constitutional validity, both of the PMCARES Fund and the PMNRF, in the light of the Disaster Management Act, 2005 ('2005 Act,' for short)** and the constitution of the National Disaster Response Fund (NDRF) by the Central Government thereunder, which is statutory fund created by due process of law**;** whereas**,** there was no such challenge in the matter of ***CPIL****, supra*.

III. Because the Hon'ble High Court lost sight of the fact that this Hon'ble Court in ***CPIL*** was neither called upon, nor has it proceeded to examine and adjudicate the legal validity of the Public Charitable Trust, i.e., the PMCARES Fund, so created by the Hon'ble Prime Minister together with other public functionaries at the helm of affairs of the Central Government, to collect donations in view of the Covid-19 pandemic, despite the Prime Minister being the *ex-officio* Chairperson of the National Disaster Management Authority **('NDMA') –** which controls the NDRF.

IV. Because the Hon'ble High Court failed to appreciate that this Hon'ble Court in ***CPIL*** (*supra*), was not at all concerned with the validity/illegality of the PMCARES fund, which is being raised in the present proceedings for the first time. As stated earlier, it is submitted that the Petitioner in the present proceedings has questioned the very legality/validity of the PMCARES Fund, together with the PMNRF, in the light of the provisions of the 2005 Act.

V. Because significantly, insofar as the publication and disclosure of the details of accounts, expenditure and activities of the PMCARES Fund to the public, as regards the

money collected therein, as well as the prayer to direct the Central Government to transfer the collected money from the PMCARES Fund and the PMNRF to the NDRF, is concerned, the same is consequential and necessary, because if this Hon'ble Court were to allow the main relief sought for herein and declare that the PMCARES Fund and the PMNRF is illegal, invalid and redundant in view of the provisions of the 2005 Act, then obviously the huge amount of money collected in the said Funds by way of contributions, etc., cannot be suspended in a vacuum, but rather incidentally and imperatively, ought to be transferred to the statutory Fund, i.e., NDRF, created under the 2005 Act. Thus, as regards the said relief, the judgment of this Hon'ble Court in ***CPIL,*** *supra*, is irrelevant and of no moment or consequence.

VI. Because the Petitioners' case in ***CPIL***, *supra*, has further been summarized by this Hon'ble Court in Paras 12 and 13 of the judgment and the same read, as follows: –

> "**12.** Petitioner's case in the writ petition is that the National Plan uploaded on the website of National Disaster Management Authority of the year 2019 does not deal with situations arising out of the current pandemic and has no mention of measures like lockdown, containment zones, social distancing etc. The Central Government has

notified COVID-19 as a "disaster" under Act, 2005 and has issued series of notifications to contain the instant pandemic. Petitioner pleads that Centre need to prepare a well-drawn National Plan to deal with instant pandemic and the same need to be prepared after due consultation with the State Government and experts. Petitioner further pleads that Centre should come up with detailed guidelines recommending the minimum standards of relief to be provided in the relief camps in relation to shelter, food, drinking water, medical cover and sanitation, in absence of which, shelter homes and relief camps are susceptible of becoming hotbeds for the spread of COVID-19 infection. Petitioner pleads that Centre should come up with detailed guidelines Under Section 12(ii) and (iii) of the Act, 2005 recommending special provisions to be made for widows and orphans and ex gratia to be provided to the kith and kin of those losing life not just because of COVID-19 infection but also due to harsh lockdown restrictions.

13. The Petitioner's case further is that the grants/contributions by individuals and institutions should be credited into the National Disaster Response Fund (NDRF) Under Section 46 of the Act, 2005 and NDRF should be utilized for meeting the ongoing COVID-19 crisis. All the contributions made by the individuals and institutions in relation to COVID-19 are being credited into the PM CARES Fund and not in NDRF, which is clear violation of Section 46 of the Act, 2005. The NDRF is subject to CAG Audit and PM CARES Fund is not subject to CAG Audit. Petitioner's case further is that the Centre may be directed to utilize NDRF for the purpose of drawing assistance to fight against COVID-19 and

all the contributions/grants from individuals and institutions 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."

VII. Because thereafter, this Hon'ble Court records the issues that arose for consideration in ***CPIL***, *supra*, in Para 21 and the same reads as follows:

"21. From the submissions of the learned Counsel for the parties and the pleadings on record, following questions arise for consideration in this writ petition:

I) Whether the Union of India Under Section 11 of Act, 2005, is obliged to prepare, notify and implement a National Disaster Management Plan specifically for pandemic COVID-19 irrespective of National Disaster Management Plan notified in November, 2019?
II) Whether the Union of India is obliged to lay down the minimum standards of relief Under Section 12 of Act, 2005, for COVID-19 irrespective of earlier guidelines issued Under Section 12 of the Act, 2005 laying down the minimum standards of relief?
III) Whether Union of India is obliged to utilise National Disaster Response Fund created Under Section 46 of the Act for the purpose of providing assistance in the fight of COVID-19?
IV) Whether all the contributions/grants from individuals and institutions should be credited to the NDRF in terms of Section 46(1) (b) of the Act rather than to PM CARES Fund?

V) Whether all the funds collected in the PM CARES Fund till date be directed to be transferred to the NDRF?

VIII. Because from the above, it is crystal clear that the matter relating to the legality/validity of the PMCARES Fund and the PMNRF was never before this Hon'ble Court in ***CPIL***, *supra*, and the said issue has been raised before this Court in the instant proceedings, for the very first time. Thus, it is picturesque that the ambit, scope and reach of the instant SLP is manifestly quite different and distinct from that of the matter in ***CPIL***, *supra*, inasmuch as, the instant SLP, *inter alia*, impugns the legal validity of the PMCARES Fund (including that of the PMNRF) and the powers of its authors in creating the same, along with the other consequential, incidental and related matters, concerning transparency and accountability. Hence, the Hon'ble High Court ought to have adjudicated the Petitioner's Writ Petition on its merits, instead of dismissing the same in the manner as stated earlier.

IX. Because the petitioner, being well acquainted with the Judgement dated 18/08/2020 of this Hon'ble Court in ***CPIL***, *supra*, which seems to be at tangent on the matters of transfer of funds collected in PM-CARES Fund to the NDRF, filed a

Supplementary Affidavit dt. 26/08/2020 in the High Court, in advance, before the hearing date of the petition, with a view to delimit the matters in issue in petitioner's Writ Petition, *supra*, vis-à-vis the matter decided by this Hon'ble Court in ***CPIL***, *supra*, and to clear the confusion, if any, in the said behalf which may do arise during the course of hearing.

X. Because it is a travesty of justice, that the High Court, without even considering or taking a note of the said Supplementary Affidavit and without allowing the Petitioner(s), to speak a word and make submissions with regard to the same, erred in law in mechanically dismissing the Writ Petition vide its impugned Order dt. 31/08/2020, without application of its mind, citing the Judgment of this Hon'ble Court, aforesaid, which, as a matter of fact, was of no moment, without hearing the petitioner on merits, and without considering the important materials on record, and issue involved thereto.

XI. Because although the impugned judgment/order dt. 31/08/2020 of the Hon'ble High Court uses the expression "*Heard learned counsel for the petitioners*," however, as is

clear from a bare perusal of the impugned judgment/order that the High Court delimited the scope of arguments only to a limited aspect of the judgment of this Hon'ble Court in ***CPIL*****,** and did not allow the counsel(s) for the petitioner to make any submissions upon the merits of the '*lis*' involved in the petitioner's case. Moreover, the expression "*Heard learned counsel for the petitioners*" has been used in a formal and routine manner, and as a matter of fact, the counsel(s) for the petitioner were afforded no opportunity to make their submissions on the merits of the case.

XII. Because the Hon'ble High Court in the impugned judgment/order relied upon paragraph 69 of the judgment in ***CPIL***, *supra*, which contains the assertion that "*The trust does not receive any Budgetary support or any Government money*," referring to the PMCARES Fund. It is emphatically submitted that the said assertion is belied by the very fact that an enormous flood of public funds/money from the Government (Ministries, Departments, Funds, Agencies, etc.) and its instrumentalities, is relentlessly gushing into the PMCARES Fund.

XIII. Because importantly, as stated above, it has recently come to light that unimaginable and unfathomable amounts of public money is being pumped unabatedly everyday, into the coffers of the said Fund, **by way of contributions from various Government Ministries, its Departments and Agencies**, etc., among others, money from Direct Taxes, Indirect Taxes, Election Commission of India, Ministry of Corporate Affairs, Ministry of Agriculture and Farmers Welfare, Ministry of Labour and Employment, Ministry of Culture, Ministry of External Affairs, Dept. of Expenditure, Dept. of Revenue, Ministry of IT, Ministry of Law and Justice, Ministry of I&B, etc., is being poured into the PMCARES Fund, to name a few. Shockingly, the money even from Government-controlled funds such as 'Assistance related to Bhopal Gas Leak Disaster' meant for the **victims of the Bhopal Gas Tragedy**, has not been spared and is also being drained into the said Fund.

XIV. Because the data available on the government website of **Public Financial Management System (PFMS),** which is a web-based online software application developed and implemented by the Controller General of Accounts (CGA),

Department of Expenditure, Ministry of Finance, Government of India, started during 2009 with the objective of tracking funds released under all Plan schemes of Government of India, and real time reporting of expenditure at all levels of Programme implementation and direct payment to beneficiaries under all Schemes,[3] reveals that by way of contributions by the Government itself, everyday money to the tune of Lakhs and Lakhs of Rupees from various Government Ministries, Departments, Funds and Agencies (abovenamed) are being pumped into the bank account of the PM CARES Fund, which is by nature non-transparent, opaque and unaccountable and what is more, beyond the purview of the RTI Act. All such money is public money belonging to the taxpayers' and citizens of India, meant to be used with utmost fairness, transparency and accountability. As of 06th March, 2021, fathomless oceans of money have secretively been poured into the PM CARES Fund, starting from 4th February, 2020, even prior to the official announcement/declaration of the creation of the Fund, on 28th March, 2020.[4] The said data is accessible at:

[3] https://www.pfms.nic.in/
[4] https://pib.gov.in/PressReleseDetailm.aspx?PRID=1608851

https://www.pfms.nic.in/static/NewLayoutCommonContent.aspx?RequestPagename=static/KnowYourPayment_new.aspx. [5]

The list of contributions by various Government Agencies into the PM CARES Fund, runs into almost 4000 pages as available on 06th March, 2021. The contribution records being extremely voluminous are not being annexed herewith, however, the same has been uploaded on Google Drive for convenience and easy access and is available to view and download at the following link: **https://drive.google.com/file/d/18HpDxpzCQoCkcRdvzql0-sD1zz8qbKzC/view?usp=sharing**.

XV. Because significantly, from the above, it is manifest that the impugned judgment/order dt. 31/08/2020, including the judgment of this Hon'ble Court in ***CPIL,*** *supra*, was based on utterly incorrect premises, i.e., **"*The trust does not receive… any Government money*."** It seems that true facts were deliberately concealed from this Hon'ble Court by the

[5] Notably, as of now, the access of the public generally has been restricted as to the PFMS website, as regards the viewing and downloading of the data relating to the Governmental contributions to the PMCARES Fund. The same raises serious apprehensions in the mind of the petitioner as to the intents and purposes behind the PMCARES Fund.

Central Government, with regard to the enormous bulk of public funds/money flowing into the PMCARES Fund from the various Ministries, Departments, Funds and Agencies of the Government, as detailed *supra*. In the circumstances, the judgment of this Hon'ble Court in ***CPIL*** is of no moment and consequence to the instant case and deserves to be ignored, and the instant case deserves to be decided on its own merits and the issues involved hereto, being uninfluenced by the judgment in ***CPIL**, supra*.

XVI. Because the judgment in ***CPIL*** relying upon the Central Government's affidavit, this Hon'ble Court in ***CPIL***, *supra*, observed that the "*PMCARES Fund consists entirely of voluntary contributions from individuals/organizations and does not get any budgetary support. No Government money is credited in the PM CARES Fund"*[6] and further reiterated the same holding that *"The Trust does not receive any budgetary support or any Government money."*[7] However, it is a matter of great pity that this Hon'ble Court was mislead by the Central Government into making the said

[6] Para 59 of the judgment in ***CPIL.***
[7] Para 69, *Ibid.*

observations, by blatantly lying, concealing and supressing the material fact(s) that an ocean of public money is surreptitiously being poured into the PMCARES Fund by the Government ministries, agencies and instrumentalities, as detailed hereinbefore.

XVII. Because in view of the above, it is crystal clear that the impugned order deserves to be set aside and the instant matter deserves to be heard on its merits, as demonstrably, the ***CPIL*** judgment and the observations made therein were the result of concealment of facts and material suppression and fraud being played upon this Hon'ble Court by the Central Government.

XVIII. Because despite receiving a deluge of public money into its coffers, it is astounding that the PMCARES Fund is totally non-transparent, opaque, unaccountable, beyond the purview of RTI Act, unaudited by the CAG and completely hidden from public view and scrutiny, in a brutal assault on the democratic soul and spirit of the Constitution of India and in teeth of the fundamental rights of the citizens guaranteed under Article 14, 19 and 21 of the Constitution. The public has absolutely no clue about the incalculable amounts of

money secretively, unauthorizedly and unlawfully being pumped into the PMCARES Fund everyday, neither have the people any inkling of where and how such money is being used/spent.

XIX. Because apart from above, it is worth recording that there is no data or proof of the voluntary donations available anywhere, which may be manifold of the involuntary/governmental ones.

XX. Because in the above context, it is interesting to note that on one hand, the Trust-Deed of the PMCARES Fund in Para 5.3 lays down that the Trust is neither intended to be, nor is owned, controlled or substantially financed by any Government or any instrumentality thereof. However, the same is completely belied by the fact that everyday, incalculable sums of money are being pumped into the PMCARES Fund from various Ministries, Agencies and Departments of the Government, as detailed hereinbefore. This shows that the intention behind the creation of this non-statutory Trust (PMCARES) by those in the helm of affairs of the Central Government, by the ordinary/registration route instead of by a legislation, while side-lining, bypassing and

substituting the statutory NDRF and hoodwinking the 2005 Act, is not at all fair.

For convenience and ready reference, the relevant portion of the Para 5.3 from the Trust-Deed of the PMCARES Fund, is gainfully excerpted as follows:

> "**5.3** …This Trust is not created by or under the Constitution of India or by any law made by the Parliament or by any State Legislature. **This Trust is neither intended to be or is in fact owned, controlled or substantially financed by any Government or any instrumentality of the Government.** There is no control of either the Central Government or any State Government/s, either direct or indirect, in functioning of the Trust in any manner whatsoever. The composition of the Board of Trustees consisting of holders of public office *ex-officio* is merely for administrative convenience and smooth succession to the trusteeship and is neither intended to be or in fact result into any governmental control in the functioning of the Trust in any manner whatsoever."

XXI. Because what is more, the Government has granted a 100% exemption from payment of Income Tax, under Section 10(23C)(i) of the Income Tax Act, 1961, to such income contributed by an Income Tax payee to the credit of the PMCARES Fund. The money so contributed to the said

funds, which otherwise would have gone directly to the public exchequer, by means of payment of Income Tax, is instead reverting to the PMCARES Fund, which in effect, amounts to the payment by the Government to the PMCARES Fund, through an Income Tax payee. Hence, the PMCARES Fund is no less than a Government trust, being run on Government money.

XXII. Because the Hon'ble High Court in its impugned judgment/order, has erroneously also relied upon Paragraphs 67 and 68 of the judgement of this Hon'ble Court in ***CPIL***, *supra*, as cited by the respondents in support of their contentions, and the High Court has used the expression "*Learned counsel for the petitioners has not been able to rebut the contention so made by the learned counsel for the respondents*," in the concluding paragraphs of its judgment, with reference to the same. For convenience and ready reference, the paragraphs 67, 68 and 69 of the judgment of this Hon'ble Court in ***CPIL***, may gainfully be excerpted as follows:

> *"67. The PM CARES Fund is a public charitable trust and is not a Government fund. The*

> *charitable trusts are public trusts. Black's Law Dictionary, Tenth Edition defines charitable trust in following words:*
>
> > *"**charitable trust.** A trust created to benefit a specific charity, specific charities, or the general public rather than a private individual or entity. Charitable trusts are often eligible for favorable tax treatment."*
>
> *68. The mere fact that administration of the Trust is vested in trustees, i.e., a group of people, will not itself take away the public character of the Trust as has been laid down in **Mulla Gulam Ali & Safiabai D. Trust Vs. Deelip Kumar & Co., (2003) 11 SCC 772**. In paragraph 4, this Court laid down:*
>
> > *"4. The mere fact that the control in respect of the administration of the Trust vested in a group of people will not itself take away the public character of the Trust……."*

XXIII. Because as regards the paragraphs 67 and 68, *supra*, it is submitted that the petitioner has no quarrel with the proposition as to the nature of a 'charitable trust,' as laid down in the said paragraphs in view of the definition given in Black's Law Dictionary and the judgment in ***Mulla Gulam Ali*** (*supra*), but rather has his reservation(s) as regards the nature of the PMCARES Fund, as a 'public charitable trust,' keeping in view the source of money, *inter alia*, from the Government and its instrumentalities. The petitioner is also

questioning the power of the Public Functionaries at the helm of affairs of the Central Government to create any 'public charitable trust,' including the PMCARES Fund, otherwise than by way of law.

XXIV. Because obviously, the nature and character of the PMCARES Fund is quite unique, distinct and distinguishable, from those kinds of trusts as the definition in Black's Law Dictionary and the judgment in ***Mulla Gulla Ali*** (*supra*), have covered. The Hon'ble High Court by the impugned judgment/order has fallen in serious error of law in relying upon the judgment of this Hon'ble Court in ***CPIL***, *supra*, while dismissing the petitioner's writ petition, which rested on a different edifice. Accordingly, the impugned judgment/order of the Hon'ble High is legally flawed and unsustainable.

XXV. Because both the PMNRF and PMCARES Fund are unconstitutional and void, as notably, prior to the 2005 Act, there was the Prime Minister National Relief Fund (PMNRF), constituted in the pre-Constitutional (and pre-2005 Act) era, as far as back as on 24/01/1948, to deal with disastrous situations when there was neither a law, nor any

pre-existing statutory fund. The Constitution of India, 1950 came into force, whereunder in **Entry 10 ("10. *Trust and Trustees*")** to the Concurrent List in Seventh Schedule to the Constitution of India, provides for creation of Trusts by respective Governments, by enacting a law to that effect. Manifestly, the Entry 10, *supra*, puts and implicit embargo and forbids the creation of any Trust, by the ordinary/registration route, otherwise than by law.

XXVI. Because remarkably, the Parliament enacted the Disaster Management Act, 2005 ("2005 Act"), laying down thereunder, a provision for the creation of a statutory public trust, i.e., the 'National Disaster Response Fund (NDRF)' by the Central Government under Section 46 of the said Act. Accordingly, the statutory trust as such was created, covering the field of the PMNRF. Thus, the PMNRF lost its utility, necessity and efficacy and became otiose and redundant due to its clash of interests with that of the NDRF. However, the said fund is still in currency.

XXVII. Because the COVID-19 pandemic was declared a 'notified disaster' under the 2005 Act by the Government of India as evinced by the Letter No. 33-4/2020-NDM-I of the Ministry

of Home Affairs, Disaster Management Division addressed to the Chief Secretaries of All States dated 14/03/2020. Significantly, the 2005 Act was used profusely, by the Central Government to cope with the COVID-19 disaster situation as the successive nation-wide lockdowns, numerous guidelines, administrative orders, etc. were issued thereunder, from time to time.

XXVIII. Because it is astounding that during the currency of the COVID-19 pandemic in full swing, the Constitutional/Public Functionaries, in the helm of affairs of the Central Government (i.e., *the Prime Minister of India, the "Settlor", together with the Minister of Defence, Minister of Home Affairs and Minister of Finance – constituting the Board of Trustees*) on 28/03/2020 created a 'public charitable trust,' under the name and style of "PM-CARES Fund," by the process of the general/ordinary/registration route, otherwise than by way of legislation.

XXIX. Because **importantly, the Entry 10, *supra*, by its intrinsic and implicit force, prohibits the Constitutional functionaries and/or the Governments from creating any trust, otherwise than by law.** Thus, the creation of the

PMCARES Fund, *supra*, is not only void *ab initio* but is also adverse to the interests of the NDRF, *supra* (*inter alia*, in terms of the scramble from the same source of funds), which was already in place, covering the field of PM-CARES Fund.

XXX. Because significantly, the Government is governed by the Rule of Law and has no power to create a Trust otherwise than by an authority of law, as referred to hereinbefore, in view of Entry 10, *supra*. The Entry 10 of the Concurrent List, provides for '*Trust and Trustees*,' thereby empowering the Central and State Governments to create a Trust and provide for its Trustees, only by way of specifically enacting a law to such end.

XXXI. Because needless to say, the Constitutional Mandate for creating a trust by making a law is an implicit, mandatory and binding prohibition on the power of the Constitutional Functionaries in the helm of affairs of the Central Government to create a non-statutory express trust (PM-CARES Fund), opaque in nature, to collect money from institutions and public generally to cope with the disaster situations, say, the COVID-19 disaster, particularly where, there is a statutory fund already in place (NDRF), which is

most transparent, democratic as well as auditable by the constitutional functionary (Comptroller and Auditor General (CAG)) and constituted for the same purpose by the Central Government under the 2005 Act. Consequently, it is submitted that that **the PMCARES Fund is illegal and void for being without legal sanction.**

XXXII. Because furthermore, the PMCARES Fund could also not be constituted, legally, in that it strikes upon and leads to a scramble for funds from the same source of income of the NDRF as contemplated under Clauses (a) and (b) of Section 46(1) of the 2005 Act, *infra*., and also otherwise, lest the NDRF along with the 2005 Act become ephemeral and lose their efficacy and existence.

XXXIII. Because remarkably, the PM is the *ex-officio* Chairman of both the PMNRF and the PM-CARES Funds, and is also the Chairperson of the NDMA, the National Authority under the 2005 Act, which controls the NDRF. It is astounding that the Hon'ble Prime Minister had been seeking donations and promoting the non-statutory 'PM-CARES Fund,' instead of seeking aid and promoting the NDRF, which is the statutory fund under the 2005 Act, needed to combat the COVID-19

crisis, and the same cannot be justified in any view of the matter.

XXXIV. Because it is submitted that the office of the Prime Minister is not only bound in law, but also in conscience, to carry out the object and mandate of the 2005 Act in its very letter and spirit. Accordingly, the new trust (PM-CARES), in pith and substance, being contrary to the 2005 Act and the statutory fund (NDRF) thereunder as well, is void *ab initio*.

XXXV. Because it is disquieting that the Hon'ble Prime Minster at the costs of the NDRF, *supra*, and without any lawful justification, has called upon to the public generally and other institutions, giving them rebate under Section 80(G) of Income Tax Act, 1961 to donate charitably to the PM-CARES Fund. However, most importantly, the Section 46(1)(b) of the 2005 Act provides for donations and grants from public and institutions, to be sought for in the NDRF. Manifestly, the action of the Government, in seeking donations in the PM-CARES Fund, instead of the NDRF is unwarranted in law, apart from being unjust and improper.

XXXVI. Because significantly, from the Preamble of the 2005 Act which states that it is "*an Act to provide for the effective management of disasters and for matters connected therewith or incidental thereto*," and from a bare perusal of the scheme and provisions of the said Act, quoted hereinbefore, it is crystalline that the 2005 Act is a complete code in itself for effectively and comprehensively dealing with disasters (as in the case of the Covid pandemic with is a notified disaster), including the provisions for collection and distribution of funds, through the NDRF, for such purposes.

XXXVII. Because this Hon'ble Court in a very recent judgment, in **Ficus Pax (P) Ltd. v. Union of India[8] ("Fiscus"),** has emphatically observed that:

> "**The Disaster Management Act, 2005, is a self-contained code and no reliance can be placed on any other law.** Further by virtue of Section 72 of the Disaster Management Act, 2005, all other enactments are overridden… ."
>
> (Emphasis Supplied)

[8] **(2020) 4 SCC 810**

XXXVIII. Because from the above, it is manifest that the creation of a separate non-statutory public charitable trust to sideline and hoodwink the statutory NDRF, is arbitrary, illegal, unconstitutional, without any authority of law and in teeth of the scheme and provisions of the 2005 Act, muchless from a conjoint reading of Section 46(1)(b) and Section 53, *supra*, of the said Act.

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

XL. Because importantly, it is pertinent to mention that all the steps and measures taken by the Government have been under the 2005 Act, including the issuance of the nation-wide lockdowns. It is perturbing, that the Government has exercised powers under the 2005 Act to combat the COVID-19 disaster, but has substituted the statutory fund/trust, the NDRF, constituted under the said Act, by the PM-CARES, a

non-statutory trust/fund, and as such, the same is arbitrary, unwarranted and bad in both fact and law.

XLI. Because this Hon'ble Court itself in para 14 of the judgment in **CPIL**, *supra*, has observed that all efforts to combat the Covid-pandemic disaster were undertaken under the 2005 Act, which may be excerpted as follows:–

> "14. A preliminary counter affidavit has been filed on behalf of the Union of India. In the counter affidavit, the Respondents have questioned the locus of the Petitioner to file this public interest litigation. Counter affidavit questions as to whether there can be a permanent body set up only to file litigation on issues, which the said body subjectively considers to be of "public interest". Counter affidavit pleads that National Disaster Management Plan as per Section 11 is already in place and relevant portion of National Disaster Management Plan - November, 2019 has been annexed as Annexure R-1 to the counter affidavit. Counter affidavit pleads that Act, 2005 provides for a broad framework in terms of the response to be provided in pursuance to a National Plan in case of any disaster. Counter affidavit pleads that National Plan does not and cannot contain step by step instructions or specific instructions for the day to day management by Government agencies in the situation of any particular and unforeseen disaster. National Plan is not a document that contains the microscopic details as to the day to day management of the issues arising out of different disasters. National Disaster Management Authority has issued various orders from time to time to take effective measures found required at the relevant point of time to contain the spread of COVID-19 in the

country. The Chairperson of National Executive Committee has issued several guidelines from time to time. National Disaster Management Authority has, in order to create preparedness with regard to any contingent biological disaster, has framed the "National Disaster Management Guidelines Management of Biological Disasters". National Disaster Management Authority has framed broad template for State level and District level for contingency plan for COVID-19.The Nodal Ministry, i.e., Ministry of Health and Family Welfare has issued a "Cluster Containment Plan for COVID-19" on 02.03.2020, which was further updated on 16.05.2020. Further instructions have been issued from time to time including the guidance documents. The Ministry of Health and Family Welfare has approved the India COVID-19 Emergency Response and Health Systems Preparedness Package of Rs. 15000 crores, which seeks to support States/Union Territories in various aspects of management of the COVID Pandemic and provides support for establishment of COVID dedicated facilities for treatment of COVID-19 cases including for critical care, enhancement in testing capacities, engagement and training of necessary human resources and procurement of essential equipment and protective gear for the health care personnel engaged in COVID-19 duties etc. With regard to minimum standards of relief, the counter affidavit refers and relies on guidelines on Minimum Standards of Relief under Section 12, which has been brought on record as Annexure R-7. The Counter affidavit also outlines various steps taken by Health Ministry as well as the Government of India."

(Emphasis Supplied)

XLII. Because in the above context, in addition to **Fiscus**, *supra*, this Hon'ble Court in **Praneet K. vs. UGC,**[9] has unequivocally observed that the Section 72 beings with a non-obstante clause and the scheme of the 2005 Act is such that it gives primacy, priority to the actions and measures taken under the Act over inconsistency in any other law for the time being in force, as follows:

> **"99.** The Disaster Management Act, 2005 empowers the State Disaster Management Authority as well as the State Government to take decision for prevention and mitigation of a disaster and the action taken by the authorities under the Disaster Management Act have been given overriding effect to achieve the purpose and object of the Act. In case of a disaster the priority of all authorities under the Disaster Management Act is to immediately combat the disaster and contain it to save human life. Saving of life of human being is given paramount importance and the Act, 2005 gives primacy, priority to the actions and measures taken under the Act over inconsistency in any other law for the time being in force. Section 72 begins with non obstante clause. This Court in **State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772** in paragraph 63 laid down following:
>
> > "63. It is well known that a non obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the

[9] **(2020) SCC Online SC 688**

same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions."

100. The Kerala High Court had occasion to consider Section 72 of the Disaster Management Act in reference to another Central Act that is Land Acquisition Act. The Division Bench of the Kerala High Court (of which one of us Justice Ashok Bhushan was also a member) laid down following in paragraph 69:

"69. The Disaster Management Act, 2005 is enacted with a definite object. Various powers have been given to the different authorities, including the DDMA to achieve the objects of the Act. Various statutory plans are to be prepared for Disaster Management. In event it is to be accepted that with regard to taking any action with regard to a premises which is in occupation/ possession/ownership of a private person, the authorities have first to draw proceedings under the Land Acquisition Act and then issue any order under the 2005 Act is to defeat the entire purpose and object of the 2005 Act. The legislature being well aware of the legal consequences have already engrafted Section 72 of the Act which gives overriding effect to the provisions of the 2005 Act, notwithstanding anything consistent therewith contained in any other law…."

(emphasis added)"

XLIII. Because in addition to above, the law is well settled in the day that when a statute provides for something to be done in a particular manner, then it is to be done as such in the

manner so prescribed. In the landmark judgment in **Taylor v. Taylor,**[10] followed in the Indian context in **Nazir Ahmad v. King Emperor,**[11] it was held that "*where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden*." This aforesaid principle has been reiterated and applied by this Hon'ble Court on numerous occasions, including by a three judge Bench of this Court in **State of U.P. v. Singhara Singh,**[12] wherein it was noted that:

> "**8.** The rule adopted in Taylor v. Taylor [(1875) 1 Ch D 426, 431] is well recognised and is founded on sound principle. **Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed.** The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted..."
>
> (Emphasis Supplied)

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[10] **(1875) 1 Ch. D. 426**
[11] **AIR 1936 PC 253(2)**
[12] **(1964) 4 SCR 485**

XLIV. Because in view of the above, it is clear that the action of the Hon'ble PM (along with other public functionaries in the helm of affairs of the Central Government) as the 'Settlor' of the 'non-statutory' PMCARES Trust meant to bypass the statutory NDRF, when all the measures to deal with the Covid-19 disaster situation have been taken under the 2005 Act, muchless, when the Hon'ble PM himself is the Chairperson of the NDMA (which controls the NDRF), is blatantly corrosive and antithetical to the scheme and provisions of the 2005 Act and in teeth thereof, and as such is without any authority of law, unwarranted, illegal and blatantly arbitrary.

XLV. Because needless to say, the creation of a separate public trust, i.e., the PM-CARES Fund, by the Constitutional/Public Functionaries in the helm of affairs, under their beck and call, in the name of combating disaster situations, would in effect amount to substituting the statutory fund (NDRF) by a non-statutory trust (PM-CARES), which is uncalled for, unwarranted, arbitrary and illegal and would make the 2005 Act maimed, crippled and ineffective.

XLVI. Because further, the funds being sought and channelized for the pre-2005 Act trust, being the PMNRF, and the newly created 'PMCARES' Trust, would restrict the inlet and flow of funds into the NDRF from the general public and other institutions, and would thus hit hard upon the very source of the funds of the NDRF. Hence, there is a competition and clash of interest between the statutory and non-statutory funds, and in the course of time the NDRF would lose its relevance and worth. Manifestly, the said trusts have trenched on the field of the statutory fund, NDRF, and are as such, redundant and void.

XLVII. Because there was no need or propriety of creating a non-statutory public charitable trust (the PM-CARES), which is non-transparent and opaque, and without any legal and governmental mechanism or control, hereinbefore referred to, while there is NDRF already in place, constituted by the Central Government under the 2005 Act, which is under the public scanner of statutory public authorities, covering the field of such trusts.

XLVIII. Because it is desirable, indispensable, pragmatic and expedient that the funds collected to cope with the COVID-

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

XLIX. Because the funds collected are supposed to be in relation to and for the purposes of coping with the disaster situation, in the public charitable trusts as against the 2005 Act, muchless creating blockade to the flow of funds from the general public and other institutions to the statutory fund NDRF, are void as defeating specific provisions of law by those in the helm of affairs who are also in control of the NDRF. Thus, there is clearly a clash of interest among the non-statutory public charitable trusts on one hand, and the NDRF scheme on the other, and the same is against the interests of the public at large.

L. Because apart from what has been stated hereinbefore, India is a country not ruled by a monarch or a despot, but it is a

democracy and every action of the Government must be informed by democratic ideals and principles. The ethos of our Constitution frowns upon the way and manner of creation of such a trust of public importance, without consulting the other members of the House of People, muchless, the opposition or its leaders. For this count also, the PMCARES Fund is bad in law.

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

LII. Because constitutional/public functionaries at the helm of affairs have no power to constitute such public trusts as may

adversely affect the fund/trust, i.e., the NDRF, so constituted by the Central Government under the 2005 Act.

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

LIV. Because furthermore, what is of utmost importance is that the money in PMCARES was collected purportedly to undertake support, relief or assistance of any kind relating to a public health emergency, as in the case of Covid-19 which is a notified disaster under or any other kind of emergency, calamity or distress, either man-made or natural, including the creation or upgradation of healthcare or pharmaceutical facilities, other necessary infrastructure, funding relevant research or any other type of support, however the onset of

Second wave and loss of lives of lakhs of people for want of healthcare, medical and pharmaceutical facilities, and suffering and dying from the same shortages as they faced last year (2020), i.e., hospital beds, ICUs, ventilators, oxygen and essential medications, defeating the rights guaranteed under the Constitution, clearly pointing to the fact that the contributions taken in name of PMCARES Fund were hardly utilized for the upgradation of healthcare, medical or pharmaceutical facilities. In the circumstances, it is incumbent upon this Hon'ble Court as the ***sentinel on the qui vive***, to call for the accounts and records of the PMCARES Fund from the Central Government, and to grant the reliefs as prayed for herein in the larger interest of democracy and the well-being of the public at large.

LV. Because the Hon'ble High Court fell in serious error of law in not distinguishing the correct nature and character of the '*lis*' involved in the petitioner's case, vis-à-vis, that of in ***CPIL***, which primarily, *inter alia*, rested on the footing of the motive of the Government in the creation of the PMCARES Fund.

LVI. Because the PMCARES Fund, is in essence, a Government trust, being created by Public Functionaries in the helm of affairs of the Central Government, and being run from the unfathomable deluge of money being credited to its account by various Government Ministries, Departments, Agencies, etc.

LVII. Because the PMCARES Fund, for all intents and purposes, is a "public authority" under Section 2(h) of the RTI Act, accordingly, the trust is bound to make the statement of its accounts, activities and expenditure, public, for the perusal of everyone, without distinction.

LVIII. Because in the wake of the creation of the PMCARES Fund, the statutory fund NDRF, already in existence, has become virtually ineffective and redundant, inasmuch as the PMCARES Fund has blocked the source of its income as contemplated under Section 46(1) of the 2005 Act.

LIX. Because the author/settlor of 'PMCARES Fund' trust is none else than the Hon'ble PM of India and the Trustees are none else than the Defence Minister, Home Minister and Finance Minister. This is the unique and distinctive nature of this

trust, which distinguishes it from other ordinary public charitable trusts.

LX. Because those in high offices of public affairs, are bound to run the country on the golden track of Rule of Law and not on a non-statutory track of trust. Thus, the impugned trust is void and unenforceable.

LXI. Because comparing the PMCARES Fund/PMNRF with other public charitable trusts is inappropriate and unwarranted.

LXII. Because the impugned trust (PMCARES Fund) is against the statutory NDRF and the 2005 Act, and has not been constituted through the due process of law.

LXIII. Because the grounds of Interim Relief(s) also form part and parcel of the grounds for the Main Relief(s) and are not reproduced herein, for the sake of brevity.

6. <u>GROUNDS FOR INTERIM PRAYER</u>:

The Petitioner seeks interim relief from this Hon'ble Court, *inter alia*, on the following grounds:

I. That the Petitioner has a good case on merits and is likely to succeed before this Hon'ble Court.

II. That the Citizen's Right to Know and utmost transparency, in governmental affairs, is the hallmark and touchstone of a True Democracy. The ideals of Democracy can never be realized, unless there is transparency, accountability and responsiveness in the affairs of governance. The citizen's right to information is increasingly being recognized as an important mechanism to promote openness, transparency and accountability in the affairs of the State.

III. That importantly, as delineated hereinbefore, unimaginable and unfathomable amounts of public money is being pumped unabatedly everyday, into the coffers of the said Fund, **by way of contributions from various Government Ministries, its Departments and Agencies**, etc., among others, money from Direct Taxes, Indirect Taxes, Election Commission of India, Ministry of Corporate Affairs, Ministry of Agriculture and Farmers Welfare, Ministry of Labour and Employment, Ministry of Culture, Ministry of External Affairs, Dept. of Expenditure, Dept. of Revenue,

Ministry of IT, Ministry of Law and Justice, Ministry of I&B, etc., is being poured into the PMCARES Fund, to name a few. Shockingly, the money even from Government-controlled funds such as 'Assistance related to Bhopal Gas Leak Disaster' meant for the victims of the Bhopal Gas Tragedy, has not been spared and is also being drained into the said Fund.

IV. That the public has absolutely no clue about the incalculable amounts of money secretively, unauthorizedly and unlawfully being pumped into the PMCARES Fund everyday, neither have the people any inkling of where and how such money is being used/spent.

V. That this Hon'ble Court in **Raj Narain v. State of U.P.,**[13] has observed that the people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The relevant portion is extracted hereunder for convenience:

> "In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can but few

[13] **(1975) 3 SCR 360**

> secrets. The people of this country have a right to know every public act, everything, that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security to cover with veil secrecy the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption."
>
> (Emphasis Supplied)

VI. That it is submitted, that **the creation of funds such as the PMCARES *sans* transparency and accountability and treating them as 'private' trusts**, exempting them from public scrutiny (as under the RTI Act) and accountability is unethical, immoral, undemocratic, bad in both law and fact, and unconstitutional. It is submitted that PMNRF and PMCARES being public trusts, both run and controlled by the Government, entrusted with the task of providing immediate relief from natural calamities, major accidents, serious ailments, riot, etc., should adopt utmost transparency

and accountability, in that, being audited by the CAG and be subject to disclosure of their entire information, about their transactions, activities, expenditure, etc., under the letter and spirit of the Right To Information (RTI) Act, 2005.[14]

VII. That it is submitted that the PMNRF and PMCARES, both, in essence are pubic authorities under Section 2(h) of the RTI Act, 2005. This Hon'ble Court in ***D.A.V. College Trust & Management Society v. Director of Public Instructions,***[15] tasked with deciding the applicability of the RTI Act to a body not constituted under an Act or Notification made by the Government, applying the principle of purposive construction, in para 17 emphatically held thus:

> **"17.** We have no doubt in our mind that the bodies and NGOs mentioned in sub-clauses (*i*) and (*ii*) in the second part of the definition are in addition to the four categories mentioned in clauses (*a*) to (*d*). Clauses (*a*) to (*d*) cover only those bodies, etc., which have been established or constituted in the four manners prescribed therein. By adding an inclusive clause in the definition, Parliament intended to add two more categories, the first being in sub-clause (*i*), which relates to bodies which are owned, controlled or substantially financed by the appropriate Government. These can be bodies which may not have been constituted by or under

[14] Section 4 of RTI Act
[15] (2019) 9 SCC 185

> the Constitution, by an Act of Parliament or State Legislature or by a notification. **Any body which is owned, controlled or substantially financed by the Government, would be a public authority**."
>
> (Emphasis Supplied)

VIII. That in addition to above, the Government in a democratic setup, such as ours, cannot be secretive in its affairs and dealings, and by not making the details of the PM-CARES Fund public will be a grave miscarriage of justice and a crowning blow to the notion of a free, open, transparent and democratic society, that is India.

IX. That it is rightly said by the American investigative journalist, popularly known as Bob Woodward that "**Democracy dies in darkness**" and in the words of the American jurist, Louis D. Brandeis "**Sunlight is the best disinfectant**," and also the pervading ethos of all the democratic societies around the world, point to openness and transparency as the edifice upon which true democracies are founded. Further, the public at large has the fundamental Right to Know under Article 21 of the Constitution of India, and deserve to know the accounts, activities and expenditure of a fund, muchless one in which they have generously

donated during the most testing times the world has ever seen, at the call of the Prime Minister. Thus, in the interest of a free and fair democratic society and the interests of justice, all the details of the PM-CARES fund deserve to be made public.

X. That in view of the above, it is crystal clear that the impugned order deserves to be set aside and the instant matter deserves to be heard on its merits, as demonstrably, the ***CPIL*** judgment and the observations made therein were the result of concealment of facts and material suppression and fraud being played upon this Hon'ble Court by the Central Government.

7. <u>MAIN PRAYER</u>:

In the facts and circumstances of the case, it is Most Respectfully prayed that this Hon'ble Court may graciously be pleased to:

A. Grant Special Leave to Appeal to the Petitioner against the impugned judgment and final order dated 31/08/2020 passed Hon'ble High Court of Judicature at Allahabad, in Public Interest Litigation (PIL) No. - 707 of 2020; AND

B. Pass such other and further orders, as may be deemed just, fit and proper by this Hon'ble Court in the facts and circumstances of the case.

8. <u>INTERIM PRAYER</u>:

In the facts and circumstances of the case, it is Most Respectfully prayed that this Hon'ble Court may be pleased to:

A. Grant *ex-parte* ad interim order, direction or writ, directing the Respondent no. 1 to make full disclosure of the statement of accounts, activity and expenditure details of the PM-CARES Fund to this Hon'ble Court and to the public at large, desirably, by publishing the aforesaid details, upon the Government website for all to see, and the accounts to be updated regularly, from time to time; AND/OR

B. Grant a further ad interim order, direction or writ, directing the audit of the PM-CARES Fund to be done by the Comptroller and Auditor General of India (CAG) and publish Audit-Report thereof (in the same way, as is done of other Government funds), from time to time, until the disposal of this writ petition, otherwise the entire nation and the petitioner shall be put to great hardships and irreparable loss; AND

C. Pass such other and further order(s), in addition to or in substitution for, which this Hon'ble Court may deem fit and proper in the circumstances of the case.

FOR WHICH ACT OF KINDNESS, THE PETITIONER SHALL AS INDUTY BOUND, EVER PRAY.

DRAWN BY:

RAJESH INAMDAR, ADV.
SHASHWAT ANAND, ADV.
JAWED UR REHMAN, ADV.
ASHUTOSH MANI TRIPATHI, ADV.
SYED AHMED FAIZAN, ADV.
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FILED BY:

[PAI AMIT]

Advocate for the Petitioner

SETTLED BY:

DEVADATT KAMAT, SR. ADV.

Filed on: 21 /06/2021

Place: New Delhi