

REPORTABLE**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION****WRIT PETITION (CIVIL) NO.546 OF 2020****CENTRE FOR PUBLIC
INTEREST LITIGATION****...PETITIONER(S)****VERSUS****UNION OF INDIA****...RESPONDENT(S)****J U D G M E N T****ASHOK BHUSHAN, J.**

From the beginning of this year, 2020, the world including our country is in the grip of a pandemic known as Novel Coronavirus (COVID-19). On 31.12.2019, a cluster of cases of pneumonia of unknown cause in the city of Wuhan, Hubei Province in China was reported to the World Health Organisation (WHO). This was subsequently identified as a new virus in January, 2020 and over the following months, the number of cases continued to rise but were not

contained to China and showed exponential growth worldwide. Due to the global rise in cases, this was declared a pandemic on 11.03.2020 by the WHO. The number of affected persons is increasing worldwide. Although, substantial population is also recovering from it but India witnessed exponential growth in number of cases in the last month.

2. The world is familiar with several kinds of disasters from time immemorial. Every country has faced one or other disaster in recent memory. Disasters disturb lives, societies and livelihood around the world. The impact of disaster is to strike hard earned economy, development and material gains. Many of the destructive hazards are natural in origin and some man made also. The whole world having faced adverse effect of different kinds of disasters is now well aware of its ill effect and steps internationally as well as nationally are being taken for last several decades to combat different

kinds of disasters. U.N. General Assembly recognizing the importance of reducing the impact of natural disaster for all people including developing countries designated 1990 as the international decade of natural disaster reduction. The International Strategy for Disaster Reduction (UNISDR) was established following IDNDR of the 1990s. The UN/GA convened the second World Conference on Disaster Risk Reduction (DRR) in Kobe, Hyogo, Japan 2005, which concluded the review of the Yokohama Strategy and its Plan of Action and the adoption of the Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters (HFA) (UNISDR 2005) by 168 countries. The HFA outlined five priorities for action:

- “(1) Ensure that DRR is a national and a local priority with a strong institutional basis for implementation;
- (2) Identify, assess, and monitor disaster risks and enhance early warning;

- (3) Use knowledge, innovation, and education to build a culture of safety and resilience at all levels;
- (4) Reduce the underlying risk factors;
- (5) Strengthen disaster preparedness for effective response at all levels."

3. On 23.12.2005, both the Houses of Indian Parliament passed a Disaster Management Bill. The Introduction and the Statement of Objects and Reasons of the Bill mentions: -

"INTRODUCTION

For prevention and mitigation effects of disasters and for undertaking a holistic, coordinated and prompt response to any disaster situation it has been decided by the Government to enact a law on disaster management to provide for requisite institutional mechanisms for drawing up and monitoring the implementation of the disaster management plans, ensuring measures by various wings of Government. To achieve this objective the Disaster Management Bill was introduced in the Parliament.

STATEMENT OF OBJECTS AND REASONS

The Government have decided to enact a law on disaster management to provide for requisite institutional mechanisms for drawing up and monitoring the

implementation of the disaster management plans, ensuring measures by various wings of Government for prevention and mitigating effects of disasters and for undertaking a holistic, coordinated and prompt response to any disaster situation."

4. The Disaster Management Act, 2005 (hereinafter referred to as "Act, 2005") was enacted to provide for the effective management of disasters and matters connected therewith or incidental thereto. The enactment of Disaster Management Act, 2005 was to bring in place requisite institutional mechanisms for drawing up and monitoring the implementation of the Disaster Management Plans and other measures by various wings of the Government for preventing and mitigating effects of disasters. We shall notice the relevant provisions of the Act a little later.
5. In accord with Disaster Management Act, 2005, Union Cabinet approved a "National Policy on Disaster

Management, 2009". Paragraph 1.1.1, 1.2.1 and 1.3.1 of the policy reads as under: -

"1.1.1 Disasters disrupt progress and destroy the hard-earned fruits of painstaking developmental efforts, often pushing nations, in quest for progress, back by several decades. Thus, efficient management of disasters, rather than mere response to their occurrence, has in recent times, received increased attention both within India and abroad. This is as much a result of the recognition of the increasing frequency and intensity of disasters, as it is an acknowledgement that good governance in a caring and civilised society, needs to deal effectively with the devastating impact of disasters.

1.2.1 India is vulnerable, in varying degrees, to a large number of natural as well as man-made disasters. 58.6 per cent of the landmass is prone to earthquakes of moderate to very high intensity; over 40 million hectares (12 per cent of land) is prone to floods and river erosion; of the 7,516 km long coastline, close to 5,700 km is prone to cyclones and tsunamis; 68 per cent of the cultivable area is vulnerable to drought and hilly areas are at risk from landslides and avalanches. Vulnerability to disasters/emergencies of Chemical, Biological, Radiological and Nuclear (CBRN) origin also exists. Heightened vulnerabilities to disaster risks can be related to expanding population, urbanisation and industrialisation, development within

high-risk zones, environmental degradation and climate change (Maps 1-4).

1.3.1 On 23 December 2005, the Government of India (GoI) took a defining step by enacting the Disaster Management Act, 2005, (hereinafter referred to as the Act) which envisaged the creation of the National Disaster Management Authority (NDMA), headed by the Prime Minister, State Disaster Management Authorities (SDMAs) headed by the Chief Ministers, and District Disaster Management Authorities (DDMAs) headed by the District Collector or District Magistrate or Deputy Commissioner as the case may be, to spearhead and adopt a holistic and integrated approach to DM. There will be a paradigm shift, from the erstwhile relief-centric response to a proactive prevention, mitigation and preparedness-driven approach for conserving developmental gains and to minimise loss of life, livelihood and property."

The policy noticed institutional framework under the Act, dealt with financial arrangement, disaster prevention, mitigation and preparedness.

6. Third U.N. World Conference on Disaster Risk Reduction was held in March, 2015 at Sendai, Japan. One of the declarations made in the conference was: -

"We, the Heads of State and Government, ministers and delegates participating in the Third United Nations World Conference on Disaster Risk Reduction, have gathered from 14 to 18 March 2015 in Sendai City of Miyagi Prefecture in Japan, which has demonstrated a vibrant recovery from the Great East Japan Earthquake in March 2011. Recognizing the increasing impact of disasters and their complexity in many parts of the world, we declare our determination to enhance our efforts to strengthen disaster risk reduction to reduce disaster losses of lives and assets from disasters worldwide."

7. The Sendai declaration dealing with priorities for action emphasized following in paragraph 33(a):-

"33(a) To prepare or review and periodically update disaster preparedness and contingency policies, plans and programmes with the involvement of the relevant institutions, considering climate change scenarios and their impact on disaster risk, and facilitating, as appropriate, the participation of all sectors and relevant stakeholders;"

8. Although Section 11 of Act, 2005 contemplated preparation of a National Plan, however, the National Plan was not prepared till the year 2016 as was

noticed by this Court in a judgment of this Court in **Swaraj Abhiyan Vs. Union of India & Ors., (2016) 7 SCC 498**. In the year 2016, National Disaster Management Plan was prepared as required by Section 11 of the Act, 2005. The preparation of the National Plan under Section 11 was noticed by this Court in **Gaurav Kumar Bansal Vs. Union of India and Ors., (2017) 6 SCC 730**. In the same judgment, this Court noticed that State Plan under Section 23 of the Act (except by two States) and District Plan have also been prepared. The preparation of National Plan, State Plan and District Plan were noticed in paragraphs 7, 11 and 12 of the above judgment, which are to the following effect:-

"7. It was further pointed out that a National Plan has been approved and placed on the website of the NDMA in terms of Section 11 of the Act and the guidelines for minimum standards of relief Under Section 12 of the Act have also been placed on the website of the NDMA.

11. As far as the preparation of the State Plan Under Section 23 of the Act is concerned, we have been informed by the learned Counsel for NDMA that all States

except Andhra Pradesh and Telangana have prepared a State Disaster Management Plan which is very much in place.

12. As far as the districts are concerned, it is stated that the District Disaster Management Authority has been constituted in every district Under Section 25 of the Act and out of 684 districts in the country, a District Disaster Management Plan is in place in 615 districts while it is under process in the remaining districts."

9. The revision of the existing National Disaster Management Plan, 2016 began in April, 2017 and completed in November, 2019. The National Disaster Management Plan approved by National Disaster Management Authority was notified in November, 2019.

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: -

- "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 COVID-19 pandemic in compliance with Section 46 of the DM Act, all the contributions/grants from individuals and institutions shall be credited to the NDRF in terms of Section 46(1)(b) rather than to PM CARES Fund and all the fund collected in the PM CARES Fund till date may be directed to be transferred to the NDRF;"

11. We have heard Shri Dushyant Dave, learned senior counsel for the petitioner. Shri Kapil Sibal has also made his submissions in support of the prayers and issues raised in the writ petition while addressing his submissions in Suo Moto Writ Petition No. 6 of 2020. We have also heard Shri Tushar Mehta, learned Solicitor General appearing for the Union of India.

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.

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.

15. Replying the averments in the writ petition regarding PM CARES Fund and NDRF, the counter affidavit pleads that there are several funds which are either established earlier or now for carrying out various relief works. PM CARES Fund is one of such funds with voluntary donations. Affidavit further states that there exist a NDRF which would not prohibit creation of a different fund like PM CARES fund which provides for voluntary donations. The directions prayed in the writ petition for transfer of funds received in PM CARES Fund in the NDRF are non-maintainable.

16. Shri Dushyant Dave, learned senior counsel appearing for the petitioner referring to the pleadings of the petitioner made in the writ petition

contends that Centre was obliged to prepare a National Plan for Disaster Management specifically for COVID-19. Shri Dave does not dispute that National Plan under Section 11 has been framed in November, 2019 but he submits that said Plan is neither comprehensive nor covers management of pandemic, i.e., COVID-19. Shri Dave submits that power given in a Statute is to be exercised in the same manner. Shri Dave further submits that there is a serious problem in implementing the National Plan, 2019. Shri Dave has taken us to certain portion of Plan of November, 2019, which has been filed as Annexure - P-2 to the writ petition. Shri Dave submits that only paragraph 7.15 deals with biological and public health emergencies but Plan does not contemplate giving any financial relief. Shri Dave submits that unless there is a National Plan for COVID-19, effective measures cannot be taken to contain COVID-19. Referring to Section 46 of the Act, 2005, Shri Dave submits that NDRF having been

constituted by Central Government, all amount given by individuals and organisations for disaster should have been credited in NDRF. He submits that PM CARES Fund should not have been constituted when NDRF is already in place to take care of disasters. Shri Dave submits that there is no provision in 2019 Plan to give fund to NDRF. Referring to Operational Guidelines for Constitution and Administration of the National Disaster Response Fund at page 129 of the writ petition, Shri Dave submits that paragraph 5.5 provides that contribution made by the persons or institutions for the purpose of disaster management to be credited in the NDRF, which clause 5.5 has been omitted in the subsequent Operational Guidelines for Constitution and Administration of the National Disaster Response Fund filed at page 154, which is recent guidelines. By deletion of clause 5.5 now contribution by any person or institution for the purpose of disaster management to the NDRF is not permissible. Shri Dave submits that petitioners have

no reason to doubt the bonafide of PM CARES Fund but by creating PM CARES Fund the NDRF is being circumvented. What cannot be done directly cannot be done indirectly. Although, NDRF is audited by CAG, the PM CARES Fund is audited by only private auditors.

17. Shri Tushar Mehta, learned Solicitor General refuting the submissions of the counsel for the petitioners submits that reliefs (i) and (ii) made in the writ petition has become infructuous since National Plan has already been prepared under Section 11, which has been referred to in the counter affidavit and relevant extract of the Plan has already been brought on record as Annexure R-1 along with counter affidavit. He submits that insofar as the guidelines for minimum standards of reliefs are concerned, there are guidelines in existence, which has been brought on record by the counter affidavit, which covers all disasters including COVID-19. Shri

Mehta submits that Plan - November, 2019 along with the powers given in the Act, 2005 contains several measures to contain the spread of COVID-19 and no separate National Plan is required for COVID-19.

18. Shri Tushar Mehta submits that a National Disaster Response Fund has been created as stipulated under Section 46 of Act, 2005, which consist of fund in the form of budgetary provisions made by the Central Government in National Disaster Response Fund. He submits that the existence of National Disaster Response Fund, which is a statutory fund, neither prevents creation of any public charitable trust receiving voluntary donation nor can remotely mean that the amount received in all such voluntary funds should go in the statutory fund created under Section 46. National Disaster Response Fund and PM CARES Fund being distinct and separate, there is no occasion for any direction to transfer the amount of PM CARES Fund to the National Disaster Response Fund.

19. We have heard the learned counsel for the parties and perused the record. Applications for intervention are rejected.

20. The respondent in its affidavit has raised contention/objection regarding the locus standi of the petitioner. It is, inter alia, contended that there cannot be a permanent body existing only for filing public interest litigations. Shri Tushar Mehta, learned Solicitor General, however, pointed out that at the outset, in the facts of the present case, he would rather like to assist the Hon'ble court on merits and requested that the question of locus standi of the petitioner which, according to him is a very serious question, be left open to be raised and decided in other proceedings. We have, therefore, heard the parties on merits, keeping the aforesaid question open, to be heard and decided in an appropriate proceeding.

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?

QUESTION NO.I

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?

22. The Act, 2005, has been enacted for the effective management of Disasters and for matters connected therewith or incidental thereto. Section 3 of the Act constitutes National Disaster Management Authority with the Prime Minister of India as the

Chairperson, ex-officio. Section 6 enumerates the powers and functions of National Authority. As per Section 6 sub-Section (2)(b), National Disaster Management Authority (hereinafter referred to as National Authority) is to approve the National Plan. Under Section 7, the National Authority may constitute an advisory Committee consisting of experts in the field of Disaster Management to make recommendations on different aspects of Disaster Management. Under Section 8, the Central Government is to constitute a National Executive Committee to assist the National Authority in the performance of its functions under the Act. Section 11 of the Act deals with National Plan, which provision is to the following effect: -

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

(2) The National Plan shall be prepared by the National Executive Committee having regard to the National Policy and in consultation with the State Governments and expert bodies or

organizations in the field of disaster management to be approved by the National Authority.

(3) The National Plan shall include -

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

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

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

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

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

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

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

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

23. As noted above, the first National Plan under Section 11 was framed in the year 2016, which was revised and the National Plan was prepared and notified in November, 2019. Extract of National Disaster Management Plan of November, 2019 has been brought on record both by the petitioner as Annexure-P2 to the writ petition as well as by the respondent as Annexure-R1 to the preliminary counter affidavit.

24. We may notice certain relevant portions of the Plan, 2019 to answer the question which is up for consideration. The Plan, 2019 under heading 'Executive Summary' states: -

"...The National Disaster Management Plan (NDMP) provides a framework and direction to the government agencies for all phases of disaster management cycle. The NDMP is a "dynamic document" in the sense that it will be periodically improved keeping up with the emerging global best practices and knowledge base

in disaster management. It is in accordance with the provisions of the DM Act, 2005, the guidance given in the National Policy on Disaster Management (NPDM) 2009, and the established national practices...”

25. In the Executive summary itself, while noticing the changes introduced, the Plan states that new sections have been added relating to several hazards including “Biological and Public Health Emergencies”. The Plan, 2019 provides a framework and directions to the Government Agencies for all phases of Disaster Management. The Plan is a dynamic document in the sense that it was to be periodically improved, keeping up with the best practices and knowledge based in Disaster Management. The Plan provides a framework covering all aspects of Disaster Management. It covers Disaster Risk Reduction, mitigation, preparedness, response, recovery and building back better. It recognizes that effective Disaster Management necessitates a comprehensive framework encompassing multiple

hazards. Paragraph 1.4 of the Plan under the heading 'Legal Mandate' states: -

"1.4. Legal Mandate

Section 11 of the DM Act 2005 mandates that there shall be a National Disaster Management Plan (NDMP) for the whole of India. The NDMP complies with the National Policy on Disaster Management (NPDM) of 2009 and conforms to the provisions of the DM Act making it mandatory for the various central ministries and departments to have adequate DM plans. While the NDMP will pertain to the disaster management for the whole of the country, the hazard-specific nodal ministries and departments notified by the Government of India will prepare detailed DM plans specific to the disaster assigned. As per Section 37 of the DM Act, every ministry and department of the Government of India, be it hazard-specific nodal ministries or not, shall prepare comprehensive DM plans detailing how each of them will contribute to the national efforts in the domains of disaster prevention, preparedness, response, and recovery.

As per the mandate of the DM Act, the NDMP assigns specific and general responsibilities to all ministries and departments for disaster management. The DM Act enjoins the NDMP to assign necessary responsibilities to various ministries to support and implement the plan. Therefore, it is incumbent on all ministries to accept all the implicit and explicit responsibilities mentioned in the

NDMP even if they are beyond what are explicitly mentioned in the normal rules of business. Disaster management requires assumption of responsibilities beyond the normal functioning. The NDMP will be complemented by separate contingency plans, SOPs, manuals, and guidelines at all levels of the multi-tiered governance system."

26. The above part of the Plan categorically states that the Plan will be complemented by several contingency plans, Standard Operating Procedures (SOPs), Manuals and Guidelines at all levels of the multi-tiered governance system. Paragraph 1.13 deals with 'types of Disasters'. Paragraph 1.13.1, 'Natural Hazards' have been enumerated in five major categories. Sub-category (5) is to the following effect:-

"1.13.1 Natural Hazards

1)...

5) Biological Process or phenomenon or organic origin or conveyed by biological vectors, including exposure to pathogenic micro-organisms, toxins and bioactive substances that may cause loss of life, injury, illness or other health impacts, property damage, loss of livelihoods and services, social and

economic disruption or environmental damage."

27. Under Table 1-1, 'Categories of Natural Hazards' have been detailed. Item (5) of the Table 1-1 is to the following effect: -

"Table 1-1: Categories of Natural Hazards

	Family	Main Event	Short Description/ Secondary Disaster
1	Geophysical		
2	Hydrological		
3	Meteorological		
4	Climatological		
5	Biological	Exposure to germs and toxic substances	• Epidemics: Viral, bacterial, parasitic, fungal, or prion infections • Insect infestations • Animal stampedes

28. Table 1-3, provides for 'Nodal Ministry for Management/Mitigation of Different Disasters' with regard to Biological Emergencies, Nodal Ministry is

notified as Ministry of Health and Family Welfare(MoHFW). Under paragraph 2.2.3.3, Biological and Public Health Emergencies have been dealt with.

The First paragraph of the above is as follows:-

“...Disasters related to this sub-group are biological emergencies and **epidemics**, pest attacks, cattle epidemics and food poisoning. Biological emergency is one caused due to natural outbreaks of **epidemics** or intentional use of biological agents (viruses and microorganisms) or toxins through dissemination of such agents in ways to harm human population, food crops and livestock to cause outbreaks of diseases. This may happen through natural, accidental, or deliberate dispersal of such harmful agents into food, water, air, soil or into plants, crops, or livestock. Apart from the natural transnational movement of the pathogenic organisms, their potential use as weapons of biological warfare and bioterrorism has become far more important now than ever before. Along with nuclear and chemical agents, many biological agents are now considered as capable of causing large-scale mortality and morbidity...”

29. Paragraphs 6 and 7 deals with “Building Disaster Resilience - Responsibility Framework, Part A and B”. Dealing with Biological and Public Health Emergencies

in paragraph 7.15, following are the sub-heads under the paragraph: -

"7.15 Biological and Public Health Emergencies (BPHE)

7.15.1 Understanding Risk

7.15.2 Inter-Agency Coordination

7.15.3 Investing in DRR-Structural Measures

7.15.4 Investing in DRR- Non-structural Measures

7.15.5 Capacity Development

7.15.6 Climate Change Risk Management"

30. A detailed chart has been prepared under paragraph 7.15 in five parts and it shall be useful to notice the only first portion of paragraph 7.15.1, item 1, which is to the following effect: -

"7.15.1 Understanding Risk

Biological & Public Health Emergencies (BPHE)					
	Sub-Thematic Area for DRR	Central/State Agencies and their Responsibilities			
		Centre#	Responsibility - Centre	State#	Responsibility -State

1.	Observation Networks, Information Systems, Monitoring, Research, Forecasting, Early Warning and Zoning/Mapping	MHFW* (NCDC), MAFW, MHA, MOD, MOES, MOEFCC, MOR, MLBE, MEITY, NDMA	<u>Recurring/Regular (RR)</u> - Support for training - Extend technical support <u>Medium Term(T2)</u> - Establishment of Early Warning System - Strengthening IDSP and early warning systems at regional levels - Epidemiological disease mapping - Health facilities mapping	HFWD*, DMD\$, SDMA, RD, DRD, UDD, DWSD, EDD, PD, EFD, AHD, WCD, PRI/ULB, SLRTI, DDMA	<u>Recurring/Regular (RR)</u> Maintaining preventive measures as per norms <u>Short Term(T1)</u> Strengthening integrated health surveillance systems <u>Medium Term(T2)</u> - Establishing and maintain community-based network for sharing alerts - Strengthening IDSP <u>Long Term(T3)</u> States should, modify or adapt IMD's warning system according to thresholds applicable in each state
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31. The other items apart from item (1) as noticed above in paragraph 7, which are relevant is as follows:-

Biological & Public Health Emergencies (BPHE)				
Sub-Thematic Area for DRR	Central/State Agencies and their Responsibilities			
	Centre#	Responsibility - Centre	State#	Responsibility -State

2.	Hazard Risk Vulnerability and Capacity Assessment (HRVCA)	MHFW*, MAFW*, MHA, MOD, MOES, MOEFCC, MSJE, NDMA	<u>Recurring/Regular (RR)</u> - Promote studies, documentation and research - Provide Training & Technical support - Studies on vulnerabilities and capacities covering social, physical, economic, ecological, gender, social inclusion and equity aspects <u>Short-Term (T1)</u> Develop guidelines	HFWD, DMD\$, SDMA, DRD, UDD, DWSD, EFD, AHD, WCD, DSJE, PRI, ULB, SLRTI, DDMA	<u>Recurring/Regular (RR)</u> - Updating HRVCA - Identifying the vulnerable population/communities/settlements - Identification of groups requiring special attention - Conduct audit of equipment and human resource requirements <u>Short term(T1)</u> Constitute/strengthen the mechanisms for consultation with experts and stakeholders
3	Dissemination of warnings, data & information	MHFW, MHA, MOD, MOES, MAFW, MOEFCC, NDMA	<u>Recurring/Regular (RR)</u> - Support for organising training - Extend technical support	HFWD*, DMD\$, SDMA, DRD, UDD, DWSD, EDD, PD, EFD, AHD, WCD, PRI, ULB, SLRTI, DDMA	<u>Short Term (T1)</u> - Create awareness preventive measures - Extensive IEC campaigns to create awareness through print, electronic and social media <u>Medium Term (T2)</u> Specific messages for highly vulnerable groups such as elderly, young children, outdoor workers and slum

					residents
4	Disaster Data Collection and Management	MHA* , MOSPI, all ministries/depts.	<u>Recurring/Regular (RR)</u> Systematic data management of data on disaster damage and loss assessments <u>Short Term (T1)</u> Disaster Damage and Losses 2005-2015 baseline	DMD\$, SDMA, all depts.	<u>Recurring/Regular (RR)</u> Systematic data management of data on disaster damage and loss assessments <u>Short Term (T1)</u> Disaster Damage and Losses 2005-2015 baseline

Notes: (#) Every ministry, department or agency of the government – central and state – not specifically mentioned will also have both direct and indirect supporting role depending on the disaster, location and context. (*) The ministry, department or agency with this symbol has or is deemed to have a nodal or lead role, while others mentioned have a direct or explicit supporting role. (\$) DMD –Disaster Management Department: The state government department acting as the nodal department for disaster management, which is not the same in every state/UT.

32. Paragraph 7.15.2 deals with inter-agency coordination in these items. Paragraph 7.15.3 deals with investing in DRR – Structural measures. Paragraph 7.15.4 deals with investing in DRR – Non-structural measures. Paragraph 7.15.5 deals with capacity development. Paragraph 7.15.6 deals with climate change risk management. The plan, thus,

contains detailed treatment of Biological and Public Health Emergencies as noticed above, which have been detailed at pages 117 to 130 of the Annexure-R1 of the counter affidavit. All aspects of Biological and Public Health Emergencies have been, thus, dealt in systematic and planned manner. The Plan of 2019 in different paragraphs deals with entire framework.

33. The submission which has been pressed by petitioner is that despite existence of Plan, 2019, there has to be specific Plan dealing with COVID-19, hence, Union of India may be directed to prepare a National Plan under Section 11 for COVID-19. Section 11 of the Act provides that there shall be a plan for Disaster Management for the whole of the Country. Sub-Section (3) of Section 11 requires that the National Plan shall include: -

“11.(3) The National Plan shall include-

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

- (b) measures to be taken for the integration of mitigation measures in the development plans;
- (c) measures to be taken for preparedness and capacity building to effectively respond to any threatening disaster situations or disaster;
- (d) roles and responsibilities of different Ministries or Departments of the Government of India in respect of measures specified in clauses (a), (b) and (c). "

34. The object and purpose of preparing a National Plan is to cope up and tackle with all conceivable disasters which the country may face. When the measures have to be taken for preparedness and capacity building to effectively respond to any threatening disaster situation, the section does not contemplate preparation of Plan after a disaster has occurred.

35. National Plan and guidelines as contemplated by the statute for Disaster Management is by its very nature prior to the occurrence of any disaster and as

a measure of preparedness. It is not conceivable that a National Plan would be framed after the disaster has occurred. A National Plan encompasses and contemplate all kinds of disasters.

36. As noticed above, Biological and Public Health Emergencies has already been contemplated in the National Plan, 2019, which as noticed in table 1-1 under paragraph 1.13.1 specifically includes **epidemics**: Viral, Bacterial, Parasitic, Fungal and prion infections. **Novel Coronavirus is an epidemic which has become a pandemic.** Epidemics of different nature and extent have taken place in this country as well as other countries of the world. A pandemic is an epidemic, i.e., spread over multiple countries/continents. An epidemic, as a disaster has been known and recognized throughout the world with which most of the countries are infected time and again. As noticed above, Plan-2019 is complemented by several

plans, Standard Operating Procedures (SOPs), Manuals, Guidelines at all levels of the Government.

37. The National Disaster Management Authority, Government of India, had issued National Disaster Management Guidelines in July, 2008 on subject "Management of Biological Disasters". The guideline specifically notices that "Biological Disasters" might be caused by epidemics, the guidelines states:-

"Biological disasters might be caused by epidemics, accidental release of virulent microorganism(s) or Bioterrorism (BT) with the use of biological agents such as anthrax, smallpox, etc. The existence of infectious diseases has been known among human communities and civilisations since the dawn of the history. The Classical literature of nearly all civilisations record the ability of major infections to decimate populations, thwart military campaigns and unsettle nations. Social upheavals caused by epidemics have contributed in shaping history over the ages..."

38. Thus, the National Disaster Management Authority was well aware of the epidemics and had issued

guidelines in the year 2008 itself which has been further detailed in Plan-2019. All aspects of the epidemics, all measures to contain an epidemic, preparedness, response, mitigation have been elaborately dealt in Plan, 2019. Unless the National Plan as contemplated under Section 11 contains all aspects of disaster including the Biological and Public Health Emergencies, it will not be possible for the Governments to immediately respond and contain an epidemic.

39. The Disaster Management Act, 2005 contain ample powers and measures, which can be taken by the National Disaster Management Authority, National Executive Committee and Central Government to prepare further plans, guidelines and Standard Operating Procedure (SOPs), which in respect to COVID-19 have been done from time to time. Containment Plan for Novel Coronavirus, 2019 has been issued by Ministry of Health and Family Welfare, Government of India,

copy of which updated up to 16.05.2020 has been brought on record as Annexure-R4. There are no lack of guidelines, SOPs and Plan to contain COVID-19, by Nodal Ministry and Annexure R-6 has been brought on record issued by Ministry of Health and Family Welfare, Government of India, i.e., Updated Containment Plan for Large Outbreaks Novel Coronavirus Disease, 2019 (COVID-19).

40. National Executive Committee as well as Nodal Ministry has issued guidelines and orders from time to time to regulate all measures to contain COVID-19. The petitioners are not right in their submissions that there is no sufficient plan to deal with COVID-19 pandemic. COVID-19 being a Biological and Public Health Emergency, which has been specifically covered by National Plan, 2019, which is supplemented by various plans, guidelines and measures, there is no lack or dearth of plans and procedures to deal with COVID-19.

41. We may also notice that this Court in **Gaurav Kumar Bansal Vs. Union of India and Others, (2017) 6 SCC 730**, has noticed that National Plan under Section 11 has already been approved by National Disaster Management Authority. In paragraph 7 of the judgment, following was laid down: -

"7. It was further pointed out that a National plan has been approved and placed on the website of NDMA in terms of Section 11 of the Act and the guidelines for minimum standards of relief under Section 12 of the Act have also been placed on the website of NDMA."

42. In view of above discussion, we do not find any merit in the claim of the petitioner that Union of India be directed to prepare a National Plan under Section 11 for COVID-19. National Plan, 2019 have already been there in place supplemented by various orders and measures taken by competent authorities under Disaster Management Act, 2005, there is no occasion or need to issue any direction to Union of

India to prepare a fresh National Plan for COVID-19. We, thus, hold that Union of India is not obliged to prepare, notify and implement a fresh National Disaster Management Plan for COVID-19.

QUESTION NO.II

II) Whether the Union of India was 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 laying down the minimum standards of relief?

43. Section 12 of the Act, deals with guidelines for Minimum Standards of Relief. Section 12 is as follows:-

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

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

- (ii) the special provisions to be made for widows and orphans;
- (iii) ex gratia assistance on account of loss of life as also assistance on account of damage to houses and for restoration of means of livelihood;
- (iv) such other relief as may be necessary."

44. The petitioner's case as noticed above is that the Centre should come up with detailed guidelines under Section 12(ii) and (iii) of Disaster Management Act, 2005, recommending special provisions to be made for widows and orphans and ex-gratia assistance to be provided to the kith and kin of those losing life because of COVID-19 infections but also as a result of harsh lockdown restrictions. It is submitted that there are no guidelines providing for minimum standards for COVID-19. The above claim of the petitioner is refuted by the respondents. The respondents have brought on record the guidelines of minimum standards of relief under Section 12 as

existing prior to COVID-19, which has been filed as Annexure-R7 to the counter affidavit. The guidelines filed as Annexure-R7 deals with

- (i) definition of Relief and Rehabilitation Camp,
- (ii) Minimum standards in respect of Shelter in relief camps,
- (iii) Minimum Standards in respect of Food in relief camps,
- (iv) Minimum Standards in respect of Water in relief camps,
- (v) Minimum Standards in respect of Sanitation in relief camps,
- (vi) Minimum Standards in respect of medical cover in relief camps and
- (vii) Minimum Standards of Relief for Widows and Orphans.

45. The guidelines brought on record under Annexure-R7, which were in existence since before declaration

of COVID-19 pandemic, covers all statutory requirement as enumerated in Section 12. Section 12 contemplates minimum standards of relief to be provided to persons affected by disaster. The word 'disaster' mentioned in Section 12 encompasses all the disasters including the present disaster. Section 12 does not contemplate that there shall be different guidelines for minimum standards of relief for different disasters.

46. The uniform guidelines are contemplated so that persons affected by disaster are provided with minimum requirement in the relief camps in respect of shelter, food, drinking water, medical cover and sanitation and other reliefs as contemplated in the section. There being already guidelines for minimum standards in place even before COVID-19, the said guidelines for minimum standards holds good even for those who are affected by COVID-19. Section 12 does not contemplate that afresh guidelines for the

minimum standards of relief be issued with regard to COVID-19. The prayer of the petitioner to direct the Union of India to issue fresh guidelines under Section 12 to be provided to persons infected with COVID-19 is misconceived.

47. The Government of India vide order dated 14.03.2020 has decided to treat COVID-19, the pandemic, as a notified disaster for the purpose of providing assistance under State Disaster Response Fund, norms of assistance for ex-gratia payment to families of deceased persons, norms of assistance for COVID-19 positive persons requiring hospitalization and some other assistance to be provided from State Disaster Response Fund have been notified by the Government of India.

48. In view of the foregoing discussions, we hold that Union of India is not obliged to lay down minimum standards of relief under Section 12 of the

Act, 2005 for COVID-19 and the guidelines issued under Section 12 providing for minimum standards of relief holds good for pandemic COVID-19 also.

QUESTION NOS. 3, 4 AND 5

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

49. All the three questions being inter-related are taken together. The submissions of the petitioner centre around National Disaster Response Fund (NDRF) and PM CARES Fund. We need to notice the nature and character of these funds for appreciating the submissions made by the learned counsel for the parties. Chapter IX of the Disaster Management Act, 2005 deals with Finance, Accounts and Audit. Section

46 provides for National Disaster Response Fund.

Section 46 reads:

"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."

50. The Central Government by notification dated 27.09.2010 which was published in Gazette Extraordinary on 28.09.2010 issued under sub-Section

(1) of Section 46 of Act, 2005 constituted "National Disaster Response Fund". The notification dated 27.09.2010 reads:

"MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 27th September, 2010

s.O.2346(E).- In exercise of the powers conferred by sub-section (1) of Section 46 of the Disaster Management Act, 2005 (53 of 2005), the Central Government hereby constitutes the National Disaster Response Fund (hereinafter NDRF) for meeting any threatening disaster situation or disaster.

[F.No.32-3/2010-NDM-I]

R.K.SRIVASTAVA, Jr. Secy."

51. Ministry of Home Affairs (Disaster Management Division) has issued guidelines on Constitution and Administration of the National Disaster Response Fund (NDRF). Section 46(1) as noted above contemplates crediting of two kind of amounts, i.e., (a) an amount which the Central Government may, after due appropriation made by Parliament by law in this

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

52. The guidelines for constitution and administration of NDRF have been brought on record by the petitioner at page 129 of the writ petition. The guidelines came into force with effect from financial year 2010-11. Paragraph 3.1 enumerated the calamities covered under NDRF. Paragraph 3.1 is as follows:

"3.1 Natural calamities of cyclone, drought, earthquake, fire, flood, tsunami, hailstorm, landslide, avalanche, cloud burst and pest attack considered to be of severe nature by Government of India and requiring expenditure by a State Government in excess of the balances available in its own State Disaster Response Fund (SDRF), will qualify for immediate relief assistance from NDRF."

53. Paragraph 5 of the guidelines deals with contribution to the NDRF. Paragraphs 5.1 to 5.5 are as follows:

"5.1 The closing balance of the NCCF at the end of financial year 2009-10 shall be

the opening balance of the NDRF in the year 2010-11.

5.2 Funds will be credited into the NDRF in accordance with the provisions of the Disaster Management Act, 2005.

5.3 The budget provision for transferring funds to the NDRF as mentioned in para 5.2 above shall be made in the Demand for grants no. 35- "Transfers to State and UT Governments" (under non-plan provision). Releases to State Governments will be made by the Ministry of Finance from this provision.

5.4 During the years 2010-15 transfers to the NDRF established in the Public Account of India will be made by operating the following heads of account: Major Head "2245-Relief on account of Natural Calamities - 80- General-797-Transfers to Reserve Funds and Deposit Account'- Transfer to National Disaster Response Fund.

5.5 Contributions made by any person or institution for the purpose of disaster management will also be credited to the NDRF. Modalities covering such contributions will be prescribed in due course."

54. Paragraph 7.1 of the guidelines deals with assessment of relief assistance from the NDRF.

Paragraph 7.1 is as follows:

"7.1 Upon a request made by a State not having adequate balance in its State Disaster Response Fund (SDRF), Ministry of Home Affairs or the Ministry of Agriculture, as the case may be, will assess whether a case for additional assistance from NDRF is made out under these guidelines and the approved items and norms of assistance under NDRF/SDRF. The following procedure will be adopted for making such assessment:

- (i) The memorandum of the State Government will be examined to assess the likely requirement of funds as per items and norms of expenditure under SDRF/NDRF. If the preliminary examination reveals that there are adequate funds in SDRF with the State for providing relief as per norms, the State would be advised accordingly.
- (ii) If the preliminary examination reveals that the State is in need of assistance, a Central Team will be deputed for making an on the spot assessment.

- (iii) The report of the Central Team shall be examined by the National Executive Committee (NEC) constituted under section 8 of the DM Act, 2005. The NEC will assess the extent of assistance and expenditure which can be funded from the NDRF, as per the norms of NDRF/SDRF, and make recommendations.
- (iv) Based on the recommendations of NEC, a High Level Committee (HLC) will approve the quantum of immediate relief to be released from NDRF."

55. The guidelines for administration of the NDRF have been revised with effect from financial year 2015-16 which have been brought on record at page 154 of the writ petition. Paragraph 3.1 of the guidelines is same as under guidelines for the financial year 2010-11. Paragraph 4.1 provides:

"4.1 The NDRF will be operated by the Government of India for the purpose of providing immediate relief to people affected by the above mentioned calamities which are assessed as being of 'severe nature', following the procedure described in para 7 of these guidelines. NDRF is classified in the Public Account in the

sub-section (b) 'Reserve Funds not bearing Interest' of the Government of India under the major head 8235- 'General and other Reserve Funds' - 119- National Disaster Response Fund".

56. Paragraph 5 deals with contribution to the NDRF and there are some changes in the guidelines in paragraph 5. Paragraphs 5.1 to 5.4 of the new guidelines are as follows:

"5.1 The closing balance of the NDRF at the end of financial year 2014-15 shall be the opening balance of the NDRF in the year 2015-16.

5.2 Funds will be credited into the NDRF in accordance with the provisions of the section 46 (a) & (b) of Disaster Management Act, 2005.

5.3 The budget provision for transferring funds to the NDRF as mentioned in para 5.2 above shall be made in the Demand for grants no. 35- "Transfers to State and UT Governments" (under non-plan provision). Releases to State Governments will be made by the Ministry of Finance from this provision.

5.4 During the years 2015-20 transfers to the NDRF established in the Public Account of India will be made by operating the following heads of account: Major Head "2245-Relief on account of Natural Calamities - 80-General-797-Transfers to Reserve Funds and Deposit Account'-Transfer to National Disaster Response Fund."

57. The above is the scheme. As per paragraph 10 of the new guidelines, expenditure from NDRF is meant to assist a State to provide immediate relief in those cases of severe calamity, where the expenditure required is in excess of the balance in the State's SDRF. The NDRF is a statutory fund required to be audited by the Comptroller & Auditor General of India, which was constituted under Act, 2005 and is still in existence for the purposes as enumerated in the statute as well as in the guidelines issued under Act, 2005.

58. We may now notice the PM CARES Fund. Petitioner has brought on record certain details of PM CARES Fund as Annexure-P13. The details about the PM CARES

Fund as brought on record as Annexure-P13 of the writ petition are as follows:

"Keeping in mind the need for having a dedicated national fund with the primary objective of dealing with any kind of emergency or distress situation, like posed by the COVID-19 pandemic, and to provide relief to the affected, a public charitable trust under the name of 'Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund' (PM CARES Fund)' has been set up.

[Click here](#) to Donate Online.

Objectives :

- To undertake and support relief or assistance of any kind relating to a public health emergency 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.
- To render financial assistance, provide grants or payments of money or take such other steps as may be deemed necessary by the Board of Trustees to the affected population.
- To undertake any other activity, which is not inconsistent with the above Objects.

Constitution of the Trust :

- Prime Minister is the ex-officio Chairman of the PM CARES Fund and Minister of Defence, Minister of Home Affairs and Minister of Finance, Government of India are ex-officio Trustees of the Fund.
- The Chairperson of the Board of Trustees (Prime Minister) shall have the power to nominate three trustees to the Board of Trustees who shall be eminent persons in the field of research, health, science, social work, law, public administration and philanthropy.
- Any person appointed a Trustee shall act in a pro bono capacity.

Other details :

- The fund consists entirely of voluntary contributions from individuals/organizations and does not get any budgetary support. The fund will be utilised in meeting the objectives as stated above.
- Donations to PM CARES Fund would qualify for 80G benefits for 100% exemption under the Income Tax Act, 1961. Donations to PM CARES Fund will also qualify to be counted as Corporate Social Responsibility (CSR) expenditure under the Companies Act, 2013
- PM CARES Fund has also got exemption under the FCRA and a separate account for receiving foreign donations has been opened. This enables PM CARES Fund to

accept donations and contributions from individuals and organizations based in foreign countries. This is consistent with respect to Prime Minister's National Relief Fund (PMNRF). PMNRF has also received foreign contributions as a public trust since 2011.

CLICK HERE TO DONATE ONLINE"

59. From the above details, it is clear that PM CARES Fund has been constituted as a **public charitable trust**. After outbreak of pandemic COVID-19, need of having a dedicated national fund with objective of dealing with any kind of emergency or distress situation, like posed by the COVID-19 pandemic, and to provide relief to the affected, a fund was created by constituting a trust with Prime Minister as an ex-officio Chairman of PM CARES Fund, with other ex-officio and nominated Trustees of the Fund. The PM CARES Fund consists entirely of voluntary contributions from individuals/organisations and does not get any Budgetary support. No Government money is credited in the PM CARES Fund.

60. After noticing constitution of NDRF as well as PM CARES Fund now we may notice the contentions raised by Shri Dave. The submission of Shri Dave is that the earlier guidelines for administration of NDRF which came into force with effect from financial year 2010-11 have been modified by new guidelines with effect from financial year 2015-16, and now it is not possible for any person or institution to make contribution to the NDRF. Shri Dave submits that paragraph 5.5 of earlier guidelines has been deleted to benefit the PM CARES Fund so that all contributions by any person or institution should go in the PM CARES Fund. Shri Dave submits that deletion of paragraph 5.5 of earlier guidelines (at page 130) in the new guidelines (at page 154-155) makes it clear that now it is not possible for any person or institution to make any contribution to NDRF.

61. There are two reasons for not accepting the above submission. Firstly, paragraph 5.5 of earlier guidelines which contemplated contributions by any

person or institution for the purpose of disaster management to the NDRF are very much still there in the new guidelines, which have come into force with effect from financial year 2015-16. New guidelines contain the same heading, i.e., "Contribution to the NDRF" and guideline 5.2 provides "Funds will be credited into the NDRF in accordance with the provisions of the Section 46(1)(a) & (b) of the Disaster Management Act, 2005." The above guideline 5.2 specifically referred to Section 46(1)(a) & (b) and Section 46(1)(b) expressly provides that any grants that may be made by any person or institution for the purpose of disaster management shall be credited into the NDRF. The submission that after the new guidelines, it is not possible for any person or institution to make any contribution to the NDRF is, thus, misconceived and incorrect. According to the statutory provisions of Section 46 as well as new guidelines enforced with effect from financial year

2015-16 any person or institution can still make contribution to the NDRF.

62. Secondly, the PM CARES Fund has been constituted in the year 2020 after outbreak of pandemic COVID-19 whereas the new guidelines came into force with effect from 2015-16, on which date the PM CARES Fund was not in existence, hence, the submission that new guidelines were amended to benefit the PM CARES Fund is wholly misconceived.

63. Another limb of submission of Shri Dave is that although the Government of India vide its letter dated 14.03.2020 has decided to treat COVID-19 as a notified disaster for the purpose of providing assistance under SDRF but no similar notification has been issued for the purpose of providing assistance for COVID-19 under NDRF. The notification dated 14.03.2020 has been brought on record as Annexure-P10 of the writ petition which reads as follows:

"No.33-4/2020-NDM-I
Government of India
Ministry of Home Affairs
(Disaster Management Division)

C-Wing, 3rd Floor, NDCC-II
Jai Singh Road, New Delhi -110001

Dated 14.03.2020

To

The Chief Secretaries
(All States)

**Subject: Items and Norms of assistance
from the State Disaster Response
Fund (SDRF) in wake of COVID-19
Virus Outbreak**

Sir/Madam

I am directed to refer this Ministry's letter No.32-7/2014 dated 8th April, 2015 on the above mentioned subject.

2. The Central Government, keeping in view the spread of COVID-19 virus in India and the declaration of COVID-19 as pandemic by the World Health Organisation (WHO), by way of a special one time dispensation, has decided to treat it as a notified disaster for the purpose of providing assistance under SDRF. A list of items and norms of assistance for containment of COVID-19 Virus in India eligible from SDRF is annexed.

Yours faithfully,

(Sanjeev Kumar Jindal)
Joint Secretary to Government of India
Tel: 23438096

Copy to AS(UT), MHA for making similar provisions for utilization of UT Disaster Response Funds by the Union Territories.

CC for information: PS to HM/MOS(N)/HS"

64. After issuance of the above notification, the Government of India, Ministry of Home Affairs (Disaster Management Division) issued order of 03.04.2020 on the subject: "Advance release of Central share from State Disaster Risk Management Fund (SDRMF) for the year 2020-21". By the said order the Central Government has released first instalment of Rs. 11,092/- crores out of Rs.22,184/- crores which was the Central Share of SDRMF. All States have been allocated different amounts for the purpose of providing assistance under SDRMF. Annexure to the said notification is at page 161, which indicates that maximum grant allocated was to the State of Maharashtra as Rs.1,611/- crores as first instalment

and minimum amount to State of Goa, i.e., Rs.6/- crores by the Centre. The notification dated 14.03.2020 clearly permits providing the assistance under SDRMF for COVID-19. In event, any State expenditure is in excess of the balance in the State's SDRMF, the State is entitled for the release of fund from NDRF as it is clear from new guidelines filed at pages 154 to 158 of the writ petition. The submission of the petitioner that NDRF cannot be used for any assistance for COVID-19, thus, cannot be accepted.

65. There is one more aspect of the matter which needs to be noted. When the Centre is providing financial assistance to the State to take measures to contain COVID-19, as we have noticed above that by order dated 03.04.2020 first instalment of Rs. 11,092/- crores which is the Central Share to the SDRMF has been given and there is nothing on record that any State has exceeded the expenditure in excess

of the balance in the State's SDRMF, there is no occasion of asking more fund by the State from NDRF. When the Central Government is providing financial assistance to the States to contain COVID-19 it is not for any PIL petitioner to say that Centre should give amount from this fund or that fund. The financial planning is in the domain of the Central Government, which financial planning is made after due deliberation and consideration. We, thus, do not find any substance in the submission of the petitioner that there is any statutory restriction/prohibition in utilization of NDRF for COVID-19. More so when sub-section (2) of Section 46 specifically provides that NDRF 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, the NDRF can be used for containment of COVID-19.

66. Further as observed above, it is for the Central Government to take the decision as from which fund what financial measures are to be taken and it is neither for PIL petitioner to claim that any financial assistance be made from particular fund nor this Court to sit in judgment over the financial decisions of the Central Government.

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.

70. Shri Dave during submissions has fairly submitted that he is not questioning the bona fide of constitution of PM CARES Fund. His submission is that NDRF is audited by CAG but PM CARES Fund is not audited by CAG rather by a private Chartered Accountant. The nature of NDRF and PM CARES Fund are entirely different. The guidelines issued under Act, 2005 with regard to NDRF specifically provides for audit of the NDRF by the Comptroller & Auditor General of India whereas for public charitable trust there is no occasion for audit by the Comptroller & Auditor General of India.

71. We may notice one more aspect with regard to COVID-19. We have noticed above that guidelines which were issued for constitution and administration of NDRF and State's SDRMF, the guidelines provided utilization of fund for limited calamities, which did not include any biological and public health emergency. We have already noticed Clause 3.1 of

guidelines for administration of NDRF, which did not provide for the calamities which cover the biological and public health emergency. Thus, under the guidelines which were in existence with effect from financial year 2015-16 neither NDRF nor SDRF covered the biological and public health emergencies. It was only by notification dated 14.03.2020 that COVID-19 was treated as notified disaster for the purpose of providing assistance under SDRF. Obviously prior to this notification dated 14.03.2020 no contribution by any person or institution in the NDRF could have been made with respect to specified disaster, namely, biological and public health emergency like COVID-19, Outbreak of COVID-19 in India as well as other countries of the World required immediate enhancement in the infrastructure of medical health and creation of fund to contain COVID-19. At this need of the hour no exception can be taken to the constitution of a public charitable trust, namely, PM CARES Fund to

have necessary financial resources to meet the emergent situation.

72. The NDRF and PM CARES Fund are two entirely different funds with different object and purpose. In view of the foregoing discussions, we answer question Nos.3, 4 and 5 in following manner:

Answer 3. The Union of India can very well utilize the NDRF for providing assistance in the fight of COVID-19 pandemic by way of releasing fund on the request of the States as per new guidelines.

Answer 4. Any contribution, grant of any individual or institution is not prohibited to be credited into the NDRF and it is still open for any person or institution to make contribution to the NDRF in terms of 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.

Answer 5. 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.

73. In view of the foregoing discussions, the prayer 'a' and 'b' made in the writ petition are refused. With respect to prayer 'c', we make it clear (i) that there is no statutory prohibition for the Union of India utilizing the NDRF for providing assistance in the fight of COVID-19 in accordance with the guidelines issued for administration of NDRF; (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.

74. The prayer of the petitioner to direct all the funds collected in the PM CARES Fund till date to be transferred to the NDRF is refused.

75. Subject to clarification of law as made above, the writ petition is dismissed.

.....J.
(ASHOK BHUSHAN)

.....J.
(R. SUBHASH REDDY)

.....J.
(M.R. SHAH)

New Delhi,
August 18, 2020.