

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

1. Shashwat Anand,
S/o, Sri Ram Chandra Shukla,
R/o, 1464, Kidwai Nagar,
Allahpur, Allahabad
- 211006. **...Petitioner No. 1**
2. Ankur Azad,
S/o, Sri Molai Prasad,
R/o, 17A/20C, Circular Road,
Ganga Nagar, Allahabad. **...Petitioner No. 2**
3. Faiz Ahmad,
S/o, Sri Farooq Ahmad,
R/o, F-004, Priyadarshani
Apartments, 28 S.N. Marg,
Allahabad. **...Petitioner No. 3**
4. Sagar,
S/o, Sri Jawahar Lal,
R/o, 777/6K/1, Bhagambari Gaddi,
Allahpur, Allahabad. **...Petitioner No. 4**

(Petitioners In-Person)**VERSUS**

1. Union of India,
Through its Secretary,
Ministry of Health and Family
Welfare, Udyog Bhawan,
New Delhi. **...Respondent No. 1**

2. Ministry of Home Affairs,
Through its Chief Secretary (Home),
North Block, Central Secretariat,
New Delhi – 110001.

...Respondent No. 2

3. National Disaster Management
Authority, Through its Secretary,
Government of India, NDMA Bhawan,
A-1, Safdarjung Enclave,
New Delhi – 110029.

...Respondent No. 3

**(All are contesting
respondents)**

**WRIT PETITION IN PUBLIC INTEREST UNDER
ARTICLE 32 OF THE CONSTITUTION OF INDIA FOR A
DIRECTION TO THE CENTRAL GOVERNMENT FOR
CARRYING OUT MASS HOUSE-TO-HOUSE TESTS FOR
TRACING, IDENTIFYING, ISOLATING AND TREATING THE
COVID-19 INFECTED PERSONS WITHIN THE TERRITORY
OF INDIA, TO BREAK THE CHAINS OF TRANSMISSION,
PREFERABLY, STARTING WITH THE STATES AND CITIES
MOST SEVERELY AFFECTED ON A PRIORITY BASIS TO
CONTAIN ITS EXPONENTIAL SPREAD IN EVERY NOOK AND
CORNER OF THE COUNTRY; ALONGWITH A FURTHER
DIRECTION TO THE GOVERNMENT TO TRANSFER/CREDIT
THE FUNDS CONTAINED IN THE PRIME MINISTER
NATIONAL RELIEF FUND (PMNRF) AND THE ‘PM-CARES
FUND’, AND THE CM-RELIEF FUNDS OF THE STATES, TO
THE ‘NATIONAL DISASTER RESPONSE FUND(NDRF)’
CONSTITUTED UNDER SECTION 46, BY THE CENTRAL
GOVERNMENT AND THE ‘STATE DISASTER RESPONSE**

FUND(SDRF)' CONSTITUTED UNDER SECTION 48, BY THE STATE GOVERNMENT, RESPECTIVELY, OF THE DISASTER MANAGEMENT ACT, 2005, TO BE USED FOR CONTAINING AND COMBATING THE CORONAVIRUS PANDEMIC AND OTHER ALLIED AND INCIDENTAL PURPOSES; AND FURTHER, FOR A DIRECTION IN EXERCISE OF THE POWER OF THIS HON'BLE COURT UNDER ARTICLE 142 OF THE CONSTITUTION OF INDIA, TO DECLARE THE PMNRF, PM-CARES FUND AND THE CM-RELIEF FUNDS AS COLLECTION AGENCIES FOR COLLECTING MONEY FOR AND IN RELATION TO THE 'NDRF' AND 'SDRF' UNDER THE SAID ACT

**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
PETITIONERS ABOVE-NAMED,**

MOST RESPECTFULLY SHOWETH:

1. That, the present petition has been filed by the petitioners-in-person in public interest, under Article 32 of the Constitution of India:

For a direction to the Central Government for carrying out

mass house-to-house tests for tracing, identifying, isolating and treating the COVID-19 (Novel CoronaVirus) infected persons within the territory of India, to break the chains of transmission, desirably, starting with the States and Cities which are the most severely affected, i.e., the ‘coronavirus hotspots,’ on a priority basis to contain its exponential spread in every nook and corner of the country otherwise combating COVID-19 would become like fighting a fire blindfolded;

Alongwith, for a further direction to the Central Government and the States to transfer/credit the money, collected and contained in the non-statutory funds/trusts being the Prime Minister National Relief Fund (PMNRF), the ‘PM-Cares Fund’, and the CM-Relief Funds of the States, to the National Disaster Response Fund (NDRF) established by the Central Government under Section 46 and the State Disaster Response Fund (SDRF) established by the State Government under Section 48, respectively, of the Disaster Management Act, 2005 (‘2005 Act,’ for short), and that the said Act may apply to the same for all uses, intents and purposes, and the same may be used for combating coronavirus and the procurement of testing kits, ventilators, personal protective equipments (PPEs), creation and maintenance of quarantine centres, etc. and matters ancillary and incidental

thereto, as far as the instant COVID-19 pandemic is concerned, in the larger good of the citizens of India;

And further, for a direction declaring the non-statutory funds/trusts being the PMNRF, PM-CARES Fund and the CM-Relief Funds of the States as collection agencies for collecting money under the Disaster Management Act, 2005 in exercise of the power conferred upon this Hon'ble Court under Article 142 of the Constitution in the interest of justice and fairness.

ARRAY OF PARTIES:

2. That, the Petitioners 1, 2 and 3 are practicing Advocates of the High Court of Allahabad, while the petitioner no. 4 is a Law Student studying in the 3-Years Law Course of the Faculty of Law, University of Allahabad, and as such, they are well aware of their rights and duties as public spirited citizens of India and are concerned with the rights of the public generally.
3. That, the Petitioner No. 1 is a citizen of India and a practicing Advocate of the High Court of Allahabad, having an annual income of Rs.2,50,000/- (approx.) per annum. The email address of the petitioner no. 1 is shashwatanandshukla@gmail.com and the mobile number is +91-7355303659. The Permanent Account Number (PAN) of the petitioner no. 1 is LNRPS2713K. The

postal address of the petitioner no. 1 is 1464, Kidwai Nagar, Allahpur, Allahabad, Pin Code - 211006.

4. That, the Petitioner No. 2 is a citizen of India and a practicing Advocate of the High Court of Allahabad, having an annual income of Rs.1,00,000/- (approx.) per annum. The email address of the petitioner no. 2 is ankurazad@ymail.com and the mobile number is +91-9307241414. The Permanent Account Number (PAN) of the petitioner no. 2 is BBWPA8732K. The postal address of the petitioner no. 2 is 17A/20C, Circular Road, Ganga Nagar, Allahabad, Pin Code - 211001.
5. That, the Petitioner No. 3 is a citizen of India and a practicing Advocate of the High Court of Allahabad, having an annual income of Rs.2,00,000/- (approx.) per annum. The email address of the petitioner no. 3 is faiz.ahmad2401@gmail.com and the mobile number is +91-8127232358. The Permanent Account Number (PAN) of the petitioner no. 3 is BHNPA6790E. The postal address of the petitioner no. 3 is F-004, Priyadarshani Apartments, 28 S.N. Marg, Allahabad, Pin Code – 211001.
6. That, the Petitioner No. 4 is a citizen of India and a Law Student studying in the final year of the 3-Years Law Course (LL.B) of the Faculty of Law, University of Allahabad, having no annual income being a student, wholly dependent on his parents. The

email address of the petitioner no. 4 is sagark14@gmail.com and the mobile number is +91-8707693369. The Permanent Account Number (PAN) of the petitioner no. 4 is HQSPS1456M. The postal address of the petitioner no. 4 is 777/6K/1, Bhagambari Gaddi, Allahpur, Allahabad, Pin Code – 211006.

7. That, the instant petition being a Public Interest Litigation, the true copies of the Adhaar/Voter-ID Card and the PAN Cards of the Petitioners 1, 2, 3 and 4 are being filed herewith and collectively annexed as **ANNEXURE P1 at Page 41 to Page 44**.
8. That, petitioners have no personal interest, or any private/oblique motive in filing the instant petition.
9. That, there is no civil, criminal, revenue or any litigation involving the petitioners, which has or could have a legal nexus with the issues involved in the instant PIL.
10. That, the petitioners are filing the instant Petition on their own volition and shall be liable to pay costs as ordered by this Hon'ble Court in the event, if it is found that this petition is filed for any personal gain or with an oblique motive.
11. That, the instant petition is based upon the information/documents which are well within the public domain and it is in the pleasure of this Hon'ble Court to take a judicial notice thereof.

12. That, the Respondent No. 1 is the Union of India, through the office of Secretary, Ministry of Health and Family Welfare, being the concerned authority charged with health policy and all government programs related to health and family welfare in India.

13. That, the Respondent No. 2 is the Ministry of Home Affairs, through the office of its Secretary, being the concerned authority responsible for domestic policy in India.

14. That, the Respondent No. 3 is the National Disaster Management Authority, constituted under the 2005 Act, through the office of its Secretary, being the apex Body of the Government of India mandated to deal with and lay down policies for disaster management in India, of which the Prime Minister is the Chairperson.

FACTS OF THE CASE:

15. That, the COVID-19 or 'Novel-Coronavirus' is a deadly and highly contagious, new strain of corona-virus which first originated in the city of Wuhan, China in November-December, 2019 and thenceforth rapidly spread all over the globe, severely infecting more than 205 countries, including India.

16. That, the World Health Organization (WHO) declared the COVID-19 a global health emergency of international concern on 30th January, 2020. The WHO in February also affirmed that the coronavirus disease has no cure or treatment as yet known to medical science or mankind. Further, the WHO on 13th March, 2020 declared the COVID-19 as a pandemic.

17. That, on 30th January, 2020 the first case of the novel coronavirus was discovered in India in the State of Kerala, where a student who had returned from Wuhan, China was traced to be infected from the said virus. Notably, the first three cases were also reported from Kerala, all of whom were students who too had returned from Wuhan, China.

18. That, importantly, the COVID-19 infection transmission escalated in the month of March, after numerous cases were reported all over the country, the majority of whom were of those people who had a travel history to coronavirus affected foreign countries. The first coronavirus death in India was reported in the State of Karnataka on 12th March, 2020 of a 76-year-old man who had returned from Saudi Arabia.

19. That, alarmingly, thereafter confirmed COVID-19 infected cases steeply increased and crossed 100 by 15th March, 500 by 24th March, 1000 by 28th March, 1500 by 31st March, more than 2000

by 2nd April, 2,653 by 3rd April, 3113 by 4th April, 3554 by 5th April and exceeded 4135 infected cases by 6th April. As of 7th April, 2020, the total number of confirmed corona infected cases have crossed over 4616 individuals. The death toll of coronavirus infected persons exceeded 50 on 1st April and as of 7th April, 2020, it is disquieting, that the total death toll for now, has reached 124 persons.

20. That, what is the most worrying is that the reported confirmed COVID-19 cases, for sure, could be a gross underestimate as the testing rate in India is amongst the lowest in the world. The shocking spike in the number of corona infected cases within a matter of days, shows that it may only be the tip of the iceberg and we're oblivious to the real gravity of the situation.

As of 7th April, 2020, 9:00 PM IST, a mere 1,14,015 samples have been tested which is roughly 82 tests per 1 million (10 lakh) people in a country of more than 1.38 billion (138 crore) people. (A true copy of the COVID-19 Status Report dated 7th April, 2020, of the Indian Council of Medical Research (ICMR), downloaded from the Government website, is annexed as **ANNEXURE P2 at Page 45.**)

21. That, the 'WHO' has, time and again, underlined the need and importance of conducting tests as the only way of combating the

coronavirus pandemic. The WHO has further stressed that not having laboratory-confirmed cases does not imply that the community is free from COVID-19, rather, it is at risk owing to insufficient testing and surveillance. The WHO has vehemently emphasized the need for urgent escalation in testing, isolation and contact tracing. (A true copy of the ‘Laboratory testing strategy recommendations for COVID-19,’ Interim Guidance by the WHO dated 22nd March, 2020, downloaded from the WHO website, is relevant and the same is annexed as **ANNEXURE P3 at Page 46 to 48.**)

22. That, it is submitted that as of now, India’s response to fighting this pandemic is basal. It is primarily focused on curbing community transmission, rather than managing, identifying and treating the virus infection following the mass tests which is, to put it differently, evinced by the lack of enough and mass house-to-house tests as proportional to the humongous and densely packed population of India. The current testing strategy of India dated 20th March, 2020 is being put forth as under:

“Current testing strategy:

- i. All symptomatic individuals who have undertaken international travel in the last 14 days:***
- ii. All symptomatic contacts of laboratory confirmed cases.***
- iii. All symptomatic health care workers.***

- iv. *All hospitalized patients with Severe Acute Respiratory Illness (fever AND cough and/or shortness of breath).*
- v. *Asymptomatic direct and high-risk contacts of a confirmed case should be tested once between day 5 and day 14 of coming in his/her contact.”*

(A true copy of the current Strategy of COVID-19 testing in India dated 20/03/2020 of the Indian Council of Medical Research (ICMR), Department of Health Research, downloaded from the Government website, is annexed herewith as **ANNEXURE P4 at Page 49.**)

23. That, significantly, of the coronavirus patients, an individual may either be symptomatic or asymptomatic (without symptoms). Apart from this, an individual may be symptomatic but may not be a coronavirus patient/carrier of COVID-19, similarly, an individual may be asymptomatic but still be a coronavirus patient/carrier of COVID-19. Hence, testing as per the current Testing Strategy, *supra*, is inadequate, insufficient and potentially dangerous and devastating as it excludes and leaves out the asymptomatic individuals who have travel history and those individuals who are asymptomatic but of indirect contact and in the low-risk category and may be carriers of the deadly COVID-19.

Accordingly, universal house-to-house testing is indispensable for the purpose of tracing the infected COVID-19 carriers/patients and isolating them for good, otherwise the whole exercise of our fight against COVID-19 pandemic would prove to be futile and the country and public at large would suffer irreparable consequences and untold misery.

24. That, as underlined by the WHO, all the countries must follow a pro-active and comprehensive approach, as the most effective way to prevent infections and save lives by breaking the chains of transmission, and the only way to do that is to test, test, test, identify and isolate. (A true copy of the speech given by the Director General on COVID-19 at media briefing on 16th March, 2020, downloaded from the WHO website, is germane and the same is annexed as **ANNEXURE P5 at Page 50 to 43.**)

25. That, needless to say, currently the entire world is suffering from the coronavirus outbreak and the COVID-19 pandemic is a disaster under the 2005 Act, within the definition of “disaster,” under Section 2(d) of the said Act, *infra*, and all the measures taken by the Government in combating the coronavirus pandemic have been undertaken under the 2005 Act, *inter alia*, the 21 days lock-down, and other steps as may be delineated hereinafter at appropriate place(s).

26. That, under the circumstances, it is submitted that the lack of adequate number of tests puts the lives of the 1.38 billion population of Indians at peril and directly affects the Right to Life and Personal Liberty and the Right to Health guaranteed by the Article 21 of the Constitution of India, 1950 ('the Constitution,' for short).

27. That, in view of the above, it is imperative for this Hon'ble Court to issue a writ, order or direction in the nature of mandamus, directing the respondent no. 1 to carry out mass house-to-house tests for identification and treatment of COVID-19 infected persons within the territory of India, desirably, starting with the States and Cities most severely affected, ie. the 'coronavirus hotspots,' on a priority basis immediately, for its management and to contain its exponential surge and spread in every nook and corner of the country, else it would be an impossibility to manage and prevent its spread, so as to save Indians from the scourge of COVID-19 pandemic.

28. That, now coming to the other significant and preponderant aspect of the matter: It is pertinent to mention, that prior to the 2005 Act, to deal with effective management of disasters or for matters connected therewith or incidental thereto, there was no public charitable fund in place, but for a public Trust titled 'Prime

Minister National Relief Fund (‘PMNRF,’ hereinafter), established by the Central Government as far back as in the year 1948 of which Prime Minister is the Chairman. The said trust is in currency as yet. With the commencement of the 2005 Act, the constitution of the National Disaster Response Fund (‘NDRF,’ for short) by the Central Government thereunder, in the nature of a public charitable trust/fund, under Section 46 of the said Act, covering the field of the PMNRF, the said Trust has lost its utility, necessity and efficacy and has become redundant and void due to clash of interests, which shall be dealt with at appropriate place(s), after a little while hereinafter.

29. That, in the above context, a panoramic survey on the scheme of the 2005 Act is a must. Accordingly, the Preamble of the said Act along with other relevant provisions, which are germane to the ‘*lis*’ involved herein, are excerpted hereunder for ready reference and easy grasp of the matter in controversy:

Preamble: “An Act to provide for the effective management of disasters and for matters connected therewith or incidental thereto.”

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;”

Section 2(j) “**“National Authority”** means the National Disaster Management Authority established under sub-section (1) of section 3;”

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.

(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:—

(a) the Prime Minister of India, who shall be the Chairperson of the National Authority, *ex officio*;

(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.”*

30. That, it is noteworthy that, of late, the Central Government in the Chairmanship of the Prime Minister has created a ‘Prime Minister’s Citizen Assistance and Relief in Emergency Situations Fund’ (referred to as ‘PM-CARES Fund’) which is a public charitable trust, for the same purpose for which the Central Government has already constituted the NDRF under the 2005 Act to cope with any threatening disaster situation or disaster, which comes under the National Disaster Management Authority

(respondent no. 3) of which the Prime Minister is also the Chairperson.

31. That, the Prime Minister in the wake of COVID-19 outbreak 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 Trust so created. Thus, it is submitted that the creation of this Trust is also redundant and void inasmuch as, it strikes at the very source of income of the NDRF as contemplated under Section 46(1)(b) of the 2005 Act. The Prime Minister is calling for money and promoting the non-statutory 'PM-Cares Fund' instead of calling for money and promoting the NDRF which is the statutory fund, under the 2005 Act needed to combat the COVID-19 crisis. Accordingly, the new trust being contrary to the 2005 Act and the statutory fund of NDRF is void *ab initio*.

32. That, similarly, the Chief Ministers of various States have been seeking donations from the general public for combating the coronavirus outbreak in Chief Minister Relief Funds (CM-Relief Funds) for such States and calling for money and promoting the same instead the statutory fund being the State Disaster Response Fund ('SDRF,' for short), constituted by the State Government under Section 48(1)(a) of the 2005 Act, of the respective States.

33. That, further, the funds being sought and channelized for the pre-2005 Act trust being the PMNRF and the newly created PM-CARES Trust, along with the various Chief Minister's funds of various States, would restrict the inlet and flow of funds into the NDRF/SDRF from the general public and other institutions, and would thus hit hard upon the very source of the funds of the NDRF/SDRF. Hence, there is a competition and clash of interest between the statutory and non-statutory funds, and in the course of time the NDRF/SDRF would lose its relevance and worth. Manifestly, the said trusts have trenched on the field of the NDRF/SDRF, the statutory fund(s) and are as such redundant and void.

In addition to above, the creation of separate public trusts by the Central and State Governments to deal with and manage disaster situations would in effect make the 2005 Act crippled and ineffective.

34. That, in addition to above, 'fund' namely the NDRF/SDRF, constituted by the Central and State Governments under Section 46 and Section 48 of the 2005 Act, respectively, being a 'property' and the 'obligations' being attached to it to fulfil the mandates of the 2005 Act, for the benefit of the public at large, and which are managed and controlled by the statutory public

authorities, in nature, essence, pith and substance, public charitable trusts under the 2005 Act for and in relation to the purpose(s) of the said Act. Thus, the NDRF/SDRF has all the trappings of public charitable trust(s), for the benefit of public at large, manned by public authorities with full statutory safeguards.

Hence, the creation of separate public charitable trusts by the Central/State Government(s) only tends to maim, weaken and paralyze the 2005 Act and the trusts/funds thereunder, being the NDRF and the SDRF.

35. That, to the utter dismay of the petitioners, it is submitted that there was no need or propriety of creating such non-statutory public charitable trust(s), which are non-transparent and opaque, and without any legal and governmental mechanism or control, hereinbefore referred to, while there is already NDRF/SDRF in place, constituted under the 2005 Act, which is under the scanner of statutory public authorities, covering the field of such trusts.

36. That, the dictates of justice demand that the funds collected to cope with the disaster and calamities, as the coronavirus pandemic, must not be scattered under different trusts, rather it must be in a uniform fund, well-guarded by the provisions of statute.

37. That, the funds collected are supposed to be in relation to and for the purposes of coping with the disaster situation, by different 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 funds NDRF and SDRF, are void as defeating specific provisions of law by those in the helm of affairs who are also in control of the NDRF/SDRF. Thus, there is clearly a clash of interest among the non-statutory public charitable trusts on one hand, and the NDRF/SDRF scheme on the other, and the same is against the interests of the public at large.

38. That, the NDRF/SDRF is well-audited, it abuse, misappropriation and misuse is an offence and punishable under the 2005 Act and the same is also transparent, subject to the Right to Information (RTI) Act, 2005 and nothing is hidden from the public, while the trust affairs, do not qualify such rigour or statutory obligations. Accordingly, Central and State Governments have no power to constitute such public trusts as may adversely affect the funds/trusts, i.e., the NDRF/SDRF, so constituted under the 2005 Act.

39. That, in view of the facts of the case compressed hereinbefore, it is submitted that the funds lying with the pre-2005 public trust (PMNRF) and the funds collected by the newly created trust (PM-

CARES Fund), deserve to be transferred/credited to the NDRF for their proper use and appropriation under the mandate of the 2005 Act.

In addition to above, the funds collected by the various CM-Relief Funds in various States, also deserve to be transferred/credited to the SDRF, constituted by the State Government under the 2005 Act, of the respective States.

40. That, goes without saying, the Chapter 7.15 of the National Disaster Management Plan, 2019 framed under Section 11 of the 2005 Act deals with 'Biological and Public Health Emergencies (BPHE)', and further, on 11th March, 2020 in the Order being F No. 40-2/2020-DM-I(A) of the Ministry of Home Affairs, in exercise of the powers conferred under Section 69 of the 2005 Act, the Union Home Secretary being Chairman of the National Executive Committee (NEC) delegated its power under clauses (i) and (l) of sub-section (2) of Section 10 of the 2005 Act to the Secretary, Ministry of Health and Family Welfare, Government of India, to enhance the preparedness and containment of novel coronavirus (COVID-19) and the other ancillary matters connected thereto. The order was specified to come into effect from 17th March, 2020. (A true copy of the Order being F No. 40-2/2020-DM-I(A) dated 11th March, 2020 of the respondent no. 2,

downloaded from the Government website, is annexed as **ANNEXURE P6 at Page 54.**)

41. That, further, it is submitted that that the COVID-19 pandemic was declared a 'notified disaster' under the 2005 Act by the Government of India as per 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, with the Subject 'Items and Norms of assistance from the State Disaster Response Fund (SDRF) in wake of COVID-19 Virus Outbreak' providing an enclosed List of items and norms of assistance for containment of COVID-19 Virus in India, eligible from the SDRF. (A true copy of the Letter No. 33-4/2020-NDM-I dated 14th March, 2020 of the respondent no. 2, downloaded from the Government website, is annexed as **ANNEXURE P7 at Page 55.**)

42. That, the Government of India through the National Disaster Management Authority (NDMA) (respondent no. 3) vide its Order No. 1-29/2020-PP (Pt.II) and the Ministry of Home Affairs (respondent no. 2) vide its Order No. 40-3/2020-DM-I(A) on 24th March in exercise of powers under Section 6(2)(i) and Section 10(2)(l) of the 2005 Act issued a 21-days lockdown in all parts of the country with effect from 25/03/2020 and framed Guidelines

thereunder. (A true copy of the Order No. 1-29/2020-PP (Pt.II) of the National Disaster Management Authority (NDMA) dated 24/03/2020, downloaded from the Government website, is annexed as **ANNEXURE P8 at Page 56**; and the Order No. 40-3/2020-DM-I(A) of the Ministry of Home Affairs dated 24/03/2020 together with Guidelines annexed thereunder, downloaded from the Government website, is annexed herewith as **ANNEXURE P9 at Page 57 to 63**.)

43. That, in the circumstances, the funds comprised under the PMNRF, 'PM-CARES Fund' and the CM-Relief Funds of all such States as have floated them, 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, it is pressing and vital that the said funds may be transferred/credited to and made a part of the NDRF and the SDRF, respectively, under the 2005 Act.

44. That, in addition to above, it is essential that this Hon'ble Court in exercise of its power under Article 142 of the Constitution, declare the said Trusts, *supra*, being the PMNRF, PM-CARES Fund and the various CM-Relief Funds as collection agencies for collecting funds in relation to and for the purposes of

NDRF/SDRF under the 2005 Act, in the interests of justice and fairness.

45. That, in the facts and circumstances of the case adumbrated hereinbefore, it is imperative that this Hon'ble Court may issue a writ, order or direction, in the nature of Mandamus directing the Central Government and the States to transfer/credit the funds collected and contained in the PMNRF and the PM-Cares Fund, and the CM-Relief Funds, to the National Disaster Response Fund (NDRF) and the State Disaster Response Fund (SDRF), respectively, and the Disaster Management Act, 2005 may apply to the same for all uses, intents and purposes, and the same may be used for combating coronavirus and the procurement of testing kits, personal protective equipments (PPEs), creation and maintenance of quarantine centres, etc. and matters ancillary and incidental thereto, as far as the instant COVID-19 pandemic is concerned, in the larger good of the citizens of India.

46. That, in addition to above, it is needful that this Hon'ble Court may issue a writ, order or direction, declaring the PMNRF, PM-CARES Fund and the CM-Relief Funds as collection agencies collecting funds in relation to and for the purposes of NDRF/SDRF under the Disaster Management Act, 2005 in

exercise of the power conferred upon this Court under Article 142 of the Constitution in the interest of justice and fairness.

47. That, the petitioners have not filed any other petition seeking the same relief(s) in any other Court.

QUESTIONS OF LAW:

In the facts and circumstance of the case, the following questions of law do arise for the determination and consideration of this Hon'ble Court:

- a. **Whether**, Article 21 of the Constitution obligates the Central/State Governments to carry out mass tests of public generally to trace those infected by COVID-19 for their isolation and treatment to break the chains of disease transmission?
- b. **Whether**, the public trust, being PMNRF constituted in the year 1948 has become redundant and void in view of 2005 Act which has squarely covered the field inhabited by the said trust?
- c. **Whether**, the PM-Cares Fund (public charitable trust) created by the Central Government with a view to collect funds or any grant made by any person or institution for the purpose of disaster management, adversely affects the scheme of NDRF, constituted by the Central Government, under the 2005 Act to cope with such a situation, in regard to the field occupied by the said Act?

- d. Whether,** the CM-Relief Funds created by the State Governments with a view to collect funds or any grant made by any person or institution for the purpose of disaster management, adversely affect the scheme of SDRF, constituted by the State Governments, under the 2005 Act to cope with such a situation, in regard to the field occupied by the said Act?
- e. Whether,** creation of non-statutory public charitable trust/fund by Prime Minister and Chief Ministers, being PM-Cares Funds and various CM-Relief Funds and promoting the same, who are also concerned with promoting NDRF/SDRF, is justified and permissible under public policy and within the scheme of the 2005 Act, keeping in view the clash of interests among such funds?
- f. Whether,** the Central and State Governments are competent to create public trusts in derogation of the 2005 Act?
- g. Whether,** the public trusts being the PMNRF, PM-Cares Fund and CM-Relief Funds are liable to be declared as collection agencies for collecting money in relation to and for the purposes of NDRF/SDRF under the 2005 Act and the funds so collected are liable to be transferred/credited to the account of the NDRF/SDRF, as the case may be?

GROUND

- A. **Because**, the exponential community spread of the most contagious and deadly coronavirus (COVID-19) cannot be put in check only by test of suspected COVID-19 infected persons, unless mass COVID-19 tests are carried out of public generally to trace people infected by COVID-19, to isolate and treat them.
- B. **Because**, looking into the crunch of financial resources at the disposal of the Governments it is desirable and necessary to carry out, in the first place, mass house-to-house tests at the COVID-19 hotspots most severely affected so as to avoid the spread of COVID-19 from the limits of such places into the public at large.
- C. **Because**, the measure of social distancing and lockdown to avoid mass transmission and selective tests of suspected corona patients, without conducting mass tests, is like fighting a fire blindfolded.
- D. **Because**, of the coronavirus patients, an individual may either be symptomatic or asymptomatic (without symptoms). Apart from this, an individual may be symptomatic but may not be a coronavirus patient/carrier of COVID-19, similarly, an individual may be asymptomatic but still be a coronavirus patient/carrier of COVID-19. Hence, testing as per the current Testing Strategy, *supra*, is inadequate, insufficient and potentially dangerous and

devastating as it excludes and leaves out the asymptomatic individuals who have travel history and those individuals who are asymptomatic but of indirect contact and in the low-risk category and may be carriers of the deadly COVID-19.

- E. **Because**, universal house-to-house testing is indispensable for the purpose of tracing the infected COVID-19 carriers/patients and isolating them for good, otherwise the whole exercise of our fight against COVID-19 pandemic would prove to be futile and the country and public at large would suffer irreparable consequences and untold misery.
- F. **Because**, the lack of adequate number of tests puts the lives of the 1.38 billion population of Indians at peril and directly affects the Right to Life and Personal Liberty and the Right to Health guaranteed by the Article 21 of the Constitution of India, 1950.
- G. **Because**, needless to say, currently the entire world is suffering from the coronavirus outbreak and the COVID-19 pandemic is a disaster under the 2005 Act, within the definition of “disaster,” under Section 2(d) of the said Act, along with being a notified disaster, and all the measures taken by the Government in combating the coronavirus pandemic have been undertaken under the 2005 Act, *inter alia*, the 21 days lock-down.

H. **Because**, the Government needs funds to immediately create isolation wards, procure testing kits, ventilators, personal protective equipments (PPEs), etc. to combat the COVID-19 pandemic.

I. **Because**, the funds created by the Central Government under public trusts (PMNRF and PM-Cares Fund) and by State Governments (CM-Relief Funds) deserve to be deemed as funds collected towards NDRF/SDRF constituted by the Central and State Governments under the 2005 Act, and the funds so collected deserve to be transferred/credited, respectively, to the NDRF/SDRF.

J. **Because**, the Central and State Governments have no jurisdiction to create public trusts for collecting funds for the same purpose for which there is NDRF and SDRF, constituted by the Central and State Governments, respectively, under the 2005 Act, in place, covering the aims and objects of the said trusts.

K. **Because**, the trusts so created cannot be allowed to defeat the statutory schemes designed under 2005 Act, to provide for the effective management of disasters and for matters connected therewith or incidental thereto.

L. **Because**, the trust created by the Central Government under the name and style of 'PM-Cares Fund' has hit hard at the source of

money of the NDRF, constituted by the Central Government, as envisaged under Section 46(1)(b) of the 2005 Act, and has maimed and made the NDRF an insignificant entity.

M. Because, the 2005 Act has established as per Section 3(1), and authority known as National Disaster Management Authority (National Authority) of which the Prime Minister is Chairperson, which is the apex body under the said Act (Section 3), the function of which is to lay down the policies, plans and guidelines for disaster management for ensuring timely and effective response to disasters (Section 6). Significantly, the PM is the Chairman of both the public trusts being PMNRF and PM-Cares Fund. Accordingly, it is not proper and appropriate for the Prime Minister to call for donations for the trusts at the cost of NDRF, constituted by the Central Government, under the 2005 Act, making it lame and ineffective.

48. Because, ‘fund’ namely the NDRF/SDRF, constituted by the Central and State Governments under Section 46 and Section 48 of the 2005 Act, respectively, being a ‘property’ and the ‘obligations’ being attached to it to fulfil the mandates of the 2005 Act, for the benefit of the public at large, and which are manned and controlled by the statutory public authorities with full statutory safeguards, has all the trappings of public charitable

trust(s) under the 2005 Act for and in relation to the purpose(s) of the said Act.

N. **Because**, the creation of separate public charitable trusts by the Central/State Government(s) only tends to maim, weaken and paralyze the 2005 Act and the trusts/funds thereunder, being the NDRF and the SDRF.

O. **Because**, the creation of non-statutory public charitable trust/fund by Prime Minister and Chief Ministers, being PM-Cares Funds and various CM-Relief Funds and promoting the same, who are also concerned with promoting the statutory funds/trusts being the NDRF/SDRF, is arbitrary, inappropriate, uncalled for, unjustified and impermissible under the public policy and within the scheme of the 2005 Act and in the interests of the public at large, keeping in view the clash of interests among such funds/trusts.

P. **Because**, the trusts created by the Central and State Governments in relation to and for the purposes of aim and objects of 2005 Act, which adversely affect the working and operation of the said Act are redundant, inoperative, uncalled for, unwarranted in both law and fact and void.

Q. **Because**, the flood of public trusts created by the Central and State Governments in relation to and for the purposes of 2005 Act, for collecting funds and retaining control over the same in effect

cripples and incapacitates the 2005 Act and accordingly, the creation of such trusts is against the 2005 Act and the public policy and hence void.

R. **Because**, the dictates of justice demand that to cope with the calamities and disaster situations as contemplated under the 2005 Act, there must be a centralized fund at the beck and call of the public authorities, as envisaged under the 2005 and the spread and the scattering of funds under various public trusts is against the nature and spirit of the 2005 Act.

S. **Because**, the trusts, *supra*, deserve to be deemed as collecting agencies for collecting money in relation to and for the purposes of NDRF/SDRF, and the funds so collected by them deserve to be deemed to be the fund of NDRF or SDRF, as the case may be, and transferred/credited to the same.

PRAYER

In view of the above and in the interests of justice, it is Most Respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a) Issue a writ, order or direction in the nature of Mandamus directing the respondent no. 1 to carry out mass house-to-house tests for identification and treatment of COVID-19 infected

persons within the territory of India, desirably, starting with the States and Cities most severely affected, ie., the ‘coronavirus hotspots,’ on a priority basis for its management and to contain its exponential surge and spread in every nook and corner of the country, so as to save Indians from the scourge of COVID-19 pandemic.

- b) Issue a writ, order or direction, in the nature of Mandamus directing the Central Government and the States to transfer/credit the funds, collected and contained in the PMNRF and the PM-Cares Fund, and the CM-Relief Funds, to the National Disaster Response Fund (NDRF) established by the Central Government under Section 46 and the State Disaster Response Fund (SDRF) established by the State Government under Section 48, respectively, of the Disaster Management Act, 2005, and that the said Act may apply to the same for all uses, intents and purposes, and the funds may be used for combating coronavirus and the procurement of testing kits, personal protective equipments (PPEs), creation and maintenance of quarantine centres, etc. and matters ancillary and incidental thereto, as far as the instant COVID-19 pandemic is concerned, in the larger good of the citizens of India.

- c) Issue a writ, order or direction, declaring the non-statutory trusts/funds being PMNRF, PM-CARES Fund and the CM-Relief Funds as collection agencies for collecting money for and in relation to the statutory funds/trusts NDRF/SDRF constituted by the Central and State Governments under Section 46 and Section 48 of the Disaster Management Act, 2005, respectively, in exercise of its inherent power under Article 142 of the Constitution, in the interest of justice and fairness.
- d) Pass such other and further order(s) in addition to or in substitution for, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

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

DRAWN BY:

Shashwat Anand,
Petitioner No. 1 In-Person,
Advocate: 1464, Kidwai Nagar,
Allahpur, Allahabad- 211006.
Mob: +91-7355303659.

Drawn & Filed On: 08/04/2020

FILED BY:

SHASHWAT ANAND
Petitioner No. 1 In-Person

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) NO. _____ OF 2020

(PUBLIC INTEREST LITIGATION)

IN THE MATTER OF:**Shashwat Anand & ORS.****...Petitioners**

Versus

Union of India & ORS.**...Respondents****AFFIDAVIT**

I, Shashwat Anand, aged about 25 years, S/o, Sri Ram Chandra Shukla, R/o, 1464, Kidwai Nagar, Allahpur, Allahabad - 211006, do hereby solemnly affirm and state on oath under:

1 That, I am the Petitioner No. 1 in the aforesaid matter and as such am fully conversant with the facts and circumstances of the case deposed below, and am competent to swear this affidavit. I have been authorised by the Petitioners 2, 3 and 4 to swear this affidavit on their behalf as well.

2 That, I have read and understood the contents of the Synopsis and List of Dates (Page C to O), Writ Petition (Page 1 to 37), and accompanying Miscellaneous Application(s). I state that the facts therein are true to the best of my knowledge, belief and nothing material has been concealed therefrom.

3 That, the Annexures filed herewith are true copies of their respective originals.

4 That, the source of the information in the instant petition is government orders, media stories and information/documents which are available in the public domain.

5 That, this petition is only motivated by public interest. I affirm that I or any of the petitioners have no personal interest in this matter.

6 That, I have done all enquiry that was possible and I state that no relevant facts in my knowledge have been withheld.



DEPONENT

VERIFICATION

I, the deponent, above named, do hereby verify that the contents of Para 1 to 6 of this affidavit are true to the best of my personal knowledge, all of which I verily believe to be true; that no part of it is false and nothing material has been concealed therefrom.

Verified at Prayagraj (Allahabad), Uttar Pradesh(U.P.), on this 8th day of April, 2020.



DEPONENT