

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

INDEX

IN

SUPPLEMENTARY AFFIDAVIT

OF

Anubhav Singh

..... **Petitioner No. 2**

IN

CIVIL MISC. WRIT PETITION (P.I.L) NO. 707 OF 2020

(Under Article 226 of the Constitution of India)

District- Allahabad

Divya Pal Singh and ANR.

..... **Petitioners**

Versus

Union of India and ANR.

..... **Respondents**

Sl. No.	Particular of Documents	Dates	Annex.	Page Nos.
1.	Civil Misc. Application under Chapter XXII, Rule 1 of High Court Rules, read with Section 151 of C.P. Code, for admitting the Supplementary Affidavit as a part of the record.			1 – 3
2.	Supplementary Affidavit of Anubhav Singh (Petitioner No. 2), together with Declaration and ID Proof.			4 – 11

Dated: [26/08/2020]

[SHASHWAT ANAND] [ANKUR AZAD]

Advocates

Counsels for the Petitioners

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

CIVIL MISC. APPLICATION NO. _____ OF 2020
(Under Chapter XXII, Rule 1 of the H. C. Rules, read with Section 151 of
C. P. Code)

ON BEHALF OF

Divya Pal Singh and ANR. **Petitioners/Applicants**

IN

CIVIL MISC. WRIT PETITION (P.I.L) NO. 707 OF 2020
(Under Article 226 of the Constitution of India)

District- Allahabad

1. Divya Pal Singh,

2. Anubhav Singh,

.....PETITIONERS

VERSUS

1. Union of India, through the Secretary, Ministry of Home Affairs, North Block, Central Secretariat, New Delhi – 110001.
2. National Disaster Management Authority, Through its Secretary, Government of India, NDMA Bhawan, A-1, Safdarjung Enclave, New Delhi – 110029.

.....RESPONDENTS

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

THE HUMBLE APPLICATION ON
BEHALF OF THE APPLICANTS
ABOVE-NAMED,

MOST RESPECTFULLY, RUNS AS UNDER:

1. That, full facts and circumstances in support of this application have been given in the accompanying Supplementary Affidavit.

2. That, in the facts and circumstances of the case, it is expedient and necessary in the interests of justice, that the accompanying **Supplementary Affidavit** may be admitted as a part of the record of the case, otherwise the petitioners/applicants shall greatly be prejudiced; And/or, 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.

Prayer

It is, therefore, prayed that this Hon'ble Court may graciously be pleased: to allow the instant Misc. Application and admit the **Supplementary Affidavit** filed herewith as a part of the record of the case, otherwise the petitioners/applicants shall greatly be prejudiced; And/or, 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.

Dated: [26/08/2020]

[SHASHWAT ANAND] [ANKUR AZAD]

Advocates

Counsels for the Petitioners

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD**SUPPLEMENTARY AFFIDAVIT****OF**

Anubhav Singh

..... **Petitioner No. 2****IN****CIVIL MISC. WRIT PETITION (P.I.L) NO. 707 OF 2020****(Under Article 226 of the Constitution of India)****District- Allahabad**

1. Divya Pal Singh,

2. Anubhav Singh,

.....PETITIONERS

VERSUS

1. Union of India, through the Secretary, Ministry of Home Affairs, North Block, Central Secretariat, New Delhi – 110001.
2. National Disaster Management Authority, Through its Secretary, Government of India, NDMA Bhawan, A-1, Safdarjung Enclave, New Delhi – 110029.

.....RESPONDENTS

Affidavit of Anubhav Singh,**Religion – Hindu, Occupation –
Legal.****(DEPONENT)**

I, the deponent, abovenamed, do hereby solemnly affirm and state as under:-

1. That, deponent is the petitioner no. 2 in the above noted case and is doing pairvy of the case for and on the behalf of the petitioner no. 1 and as such is fully acquainted with the facts of the case deposed hereunder.

2. That, **the petitioners have filed the abovementioned writ petition, *inter alia*:**

Assailing the constitutional validity of Prime Minister National Relief Fund ('PMNRF,' for short), and the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (referred to as 'PM-CARES Fund') for declaring the said Funds, as unconstitutional and void.

Along with a prayer, commanding the Respondent No. 1 to make full disclosure of the accounts, activity and expenditure details of the PM-CARES Fund to the public at large: And to make public the Trust-Deed of the PM-CARES Fund for the people generally, both, desirably, by publishing the aforesaid details and trust-deed, upon the Government website for all to see, and the accounts to be updated regularly: And to direct the audit of the PM-CARES Fund to be done by the Comptroller and Auditor General of India (CAG), in the fitness of the things and in the interests of justice and the public at large.

And, along with a further prayer, directing the Central Government to transfer/credit the money/funds, collected and contained in the PMNRF and the PM-CARES Fund, to the account of the National Disaster Response Fund (NDRF).

3. That, significantly, on 18 August, 2020, the Supreme Court of India in Writ Petition (Civil) No. 546/2020, *Centre for Public Interest Litigation vs Union of India*, has rendered a judgment which seems at tangent in the matters of transfer of funds collected in PM-CARES Fund to the NDRF, constituted by the Central Government under the Disaster Management Act, 2005 ('2005 Act,' for short).

Hence, a necessity to file the instant **Supplementary Affidavit** has arisen to delimit the scope and field of instant writ petition *vis-a-vis* the matter decided by the Supreme Court vide its Judgment dt. 18/08/2020, *supra*.

4. That, **at the very threshold, it is submitted that:**

4.1. The ‘matter’ in issue in the instant writ petition is not the same as the matter directly and substantially in issue in the writ petition, decided by the Hon’ble Supreme Court, wherein the Supreme Court has formulated the following Questions for its due consideration:

- 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?*

Of the issues, culled out by the Hon’ble Supreme Court, *supra*, only the Issues IV and V are preponderant and worth consideration herein, with regard to ‘*lis*’ involved in the instant writ petition.

Accordingly, the basic and foundational facts, germane to the above Issues IV and V, have been contemplated only in two Paragraphs, 32 and 33, in the Writ Petition in W. P. (C) No. 546/2020, *Centre for Public Interest Litigation v. Union of India*, and the same are gainfully excerpted below:

“32. That meanwhile, on 28.03.2020, the GOI constituted PM's Citizen Assistance and Relief in Emergency Situations (PM-CARES) Fund as a public charitable trust 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. It is pertinent to mention herein that the Hon'ble 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. It is to be noted that donations to PM CARES Fund qualify for 80G benefits for 100% exemption under the Income Tax Act, 1961 and such donations also qualify to be counted as CSR expenditure under the Companies Act, 2013. A copy of the details of PM CARES Fund as provided in its official website is annexed hereto and marked as ANNEXURE P-13 (Pg. 163 – 164).

33. That even though there is a provision for National Disaster Response Fund (NDRF) under Section 46 of the DM Act, 2005 the Central Government has come up with a PM-CARES Fund. All the contribution being made by individuals and institutions in relation to COVID-19 crisis are being credited into the PM-CARES Fund and not to the NDRF, in clear violation of section 46 of the DM Act. It is highly pertinent to mention herein that whereas the NDRF is subject to CAG audit and RTI Act 2005, the PM-CARES Fund is not subject to CAG audit and according to a recent RTI reply, dated 29.05.2020, PM-CARES Fund doesn't come under the RTI Act, 2005 either. As per the said RTI reply received from Prime Minister's office, PM CARES Fund is not a Public Authority under the ambit of Section 2(h) of the RTI Act,

2005. It is to be noted that Centre has been refraining from divulging information about the specific utilization of crores of rupees that have been contributed to the PM CARES Fund till date. It is humbly submitted by the Petitioner herein that the Centre may be directed 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 transferred to the NDRF. A copy of the RTI reply, dated 29.05.2020, received from the PMO, is annexed hereto and marked as ANNEXURE P-14 (Pg. 165 – 166).”

4.2. On the other hand, the following Questions do arise for consideration in the instant Writ Petition:

- a) WHETHER, both the **PMNRF** (constituted in the pre-Constitutional era, as far as back as on 24/01/1948, to deal with disastrous situations when there was neither a law, nor any statutory fund already constituted) and the **PM-CARES Fund** (constituted post-2005 Act by the Central Government on 28/03/2020, in the aftermath of the COVID-19 disaster outbreak) became redundant and void with the commencement of the 2005 Act, pregnant with the constitution of a statutory fund thereunder, being the NDRF, in view of the Section 72 of the said Act?
- b) WHEHER, the Respondent No. 1 has the power to constitute a public charitable trust, i.e., the PM-CARES Fund, **otherwise than by law**, in teeth of the Entry 10 of

the Concurrent List in the Seventh Schedule of the Constitution of India, 1950?

- c) WHETHER, the field of the PM-CARES Fund was already covered by the 2005-Act and the NDRF constituted thereunder, and as such the PM-CARES Fund is repugnant to the 2005 Act, muchless the NDRF, and hence, unconstitutional and void, to the extent of repugnancy, in view of Article 254 of the Constitution of India, 1950?
- d) WHETHER, in view of the above, the Central Government is under obligation to make full disclosure of the accounts, activity and expenditure details of the PM-CARES Fund to the public at large; And to make public the Trust-Deed of the PM-CARES Fund for the access of public generally; both, desirably, by publishing the aforesaid details and trust-deed, upon the Government website for all to see, and the accounts to be updated regularly: And to direct the audit of the PM-CARES Fund to be done by the Comptroller and Auditor General of India (CAG)?
- e) WHETHER, it is just and appropriate for the Prime Minister (PM), who is Chairperson of the National Disaster Management Authority (NDMA; National Authority under S. 3 of 2005 Act) which helms and controls the NDRF, to promote and call for funds for the non-statutory PM-CARES Fund, instead of the statutory NDRF, thereby, in effect, subduing the statutory fund (NDRF) by the non-statutory fund (PM-CARES Fund), and consequently, giving rise to clash of interest between both the said funds

and creating an outbreak for scramble of money/funds from the same source as contemplated under Section 46(1)(b) of the 2005 Act, and thereby, making the NDRF illusory and weakening, maiming and crippling the 2005 Act?

- f) WHETHER, further, in view of the above, the funds lying in both the PMNRF and the PM-CARES Fund, deserve to be transferred/credited to the account of the NDRF, which is the statutory fund, transparent in all respects, while, the said funds are opaque and are unavailable for the access of the public generally, for whose benefit they are purported to be meant for?

5. That, from the facts and circumstances adumbrated hereinbefore, it is picturesque that ambit, scope and reach of the instant Petition is quite different, distinct and poles apart from that of the W. P. (C) No. 546/2020, *Centre for Public Interest Litigation vs Union of India*, inasmuch as, the ‘matter’ in the latter petition is laced, laden and founded upon the ‘alleged motive of the Government’ in constituting the PM-CARES Fund; Whereas, the instant petition impugns the constitutional validity of the said Fund, along with other matters.

6. That, the petitioners seek the indulgence of this Hon’ble Court to produce the copy of the Writ Petition in W. P. (C) No. 546/2020, *Centre for Public Interest Litigation vs Union of India*, and that of the judgment of the Hon’ble Supreme Court dt. 18/08/2020 rendered thereto, for the perusal of this Hon’ble Court at the time of the hearing, if so desired.

7. That, in view of the facts and circumstances compressed hereinbefore, it is expedient, necessary and imperative in the interests of justice, that the instant Supplementary Affidavit may be taken on record, as a part thereof,

otherwise the petitioners shall greatly be prejudiced; And/or, 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.

VERIFICATION

I, the deponent, above named, do hereby verify: that the contents of Paragraphs 1 & 2 of the accompanying application and those of Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of this Affidavit are true to my personal knowledge; and that no part of it is false and nothing material considered has been concealed.

SO HELP ME GOD

(DEPONENT)

I, **SHASHWAT ANAND**, Advocate, High Court, Allahabad do hereby declare that the person making this affidavit and alleging himself to be the deponent is the same person and is known to me personally for quite some time.

(ADVOCATE)

Solemnly affirm before me on this _____ day of August, 2020 at about _____ a.m/p.m. by the deponent who has been identified by the aforesaid person.

I have satisfied myself by examining the deponent that he has understood the contents of this affidavit, which have been read over and explained to him.

OATH COMMISSIONER