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TBOMBAY,
NAGPURBENCH:NAGPUR.

PUBLICINTERESTLITIGATION:LD
-VC-PILNO.54/2020

Adv . Arvind K . Waghmare ,

.Petitioner.

.VERSUS.

1. PM
CaresFund(Prim
eMinisters
CitizensAssist
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EmergencySitua
tion), APublic
CharitableTrus
tCreatedby
UnionCabinetof
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s
Chairpersonand
Boardof
Trustees, atheO
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Block, NewDelhi
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2. PM
CaresFund(PrimeM
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CitizensAssistan
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Emergency Situation), A Public Charitable Trust created by Union Cabinet of India, through its Under Secretary (Funds), at the Office of PMO South Block, New Delhi-1001.

3. Union of India, Department of Defence, through its Principle Secretary, New Delhi.
4. Union of India, Department of Home Affairs, through its Principle Secretary, New Delhi.
5. Union of India, Department of Finance, through its Principle Secretary, New Delhi.
6. The Divisional Commissioner, Nagpur Division, Nagpur.
7. The Divisional Commissioner, Amravati Division, Amravati.
8. The Collector, Nagpur.

9. TheMunicipal
Commissioner

NagpurMunici
palCorporati
on,
Nagpur.
dents.

.Respon

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Shri.A.K.Waghmare, Advocateandth
epetitionerinperson.

ShriAnilSingh, Ad
ditionalSolicitorGeneralofIndiaf
orRespondentNos. 1 to5.

Mrs.N.P.Mehta, Ad
l.GovernmentPleaderforResponde
tNos. 6to8.

ShriS.M.Puranik, AdvocateforRespon
dentNo. 9.

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CORAM :
-SUNILB. SHUKREAND
ANILS. KILOR, J.

JUDGMENTRESERVEDON: 20.08.2
020

JUDGMENTPRONOUNCEDON: 27.0
8.2020

(PerShriSunilB.Shukre, J.)

1. Heard.

Rule, madereturnableforthwit
h. Heardfinalyby consent.

2. The petitioner, a citizen
ofIndia, a

permanent resident of
Nagpur and a
Legal Practitioner having more
than 20 years of
standing at the Bar, feeling conc
erned about what he considers to
be a
case of non transparency in the o
peration and functioning of a pub
lic
fund called "P.M. CARES Fund" (Pri
me Ministers Citizens Assistan
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and Relief in Emergency Situation” (hereinafter called as “fund” for the sake of brevity), which is a registered charitable Trust, has filed this petition seeking four distinct reliefse laborately set out in the prayer clauses of the petition.

3. In the beginning itself, the petitioner has made it clear in the petition that he does not challenge and dispute the creation of the P.M.

CARES Fund on any ground, constitutional or otherwise rather, he is only concerned about what he considers to be presence of an element

of seclusion in the fund in its functional and operational dynamics.

The petitioner submits that as a citizen of India as well as a small donor to the P. M. CARES Fund, the petitioner has every right to know

exact position of the account of the fund and as to why all the trustees

on the Board of Trustees as per the scheme of the fund have not been nominated by the Hon'ble Chairperson of the fund.

According to the petitioner, nomination of all the trustees on the Board is essential for

the fund to operate equitably, and fairly, in the interest of welfare of

the beneficiaries for whose assistance the fund has been set up.

The
petitioner also contends that
a member to be appointed on the
Board of Trustees must also
include two persons
of eminence
belonging to opposite political
parties, which provision, not
expressly made in the scheme of
the fund, needs to be
incorporated.

According to the petitioner, as some persons have still not been nominated on the Board of Trustees by the Hon'ble Chairperson, the constitution of Board of Trustees is inadequate and, therefore, any decision taken by the Board of Trustees including the one relating to appointment of any private Auditor has been done in the present case by appointing M/s SARC Associates, Chartered Accountant, New-Delhi as an Auditor for P.M. CARE SFund would not be a decision of the Board of Trustees and would be a decision taken not in the "wisdom" of the Board of Trustees

s.

The petitioner further contends that in the interest of transparency, it is necessary to direct the Board of Trustees to make public all the moneys received in the fund as of date and also disbursements made from the fund from time to time.

4. The reply to this petition has not been filed by the respondents to whom the notices were issued.

Shri Anil Singh, learned Additional Solicitor General of India appearing for the Union of India submits that a few more petitions involving more or less similar issues were pending adjudication before the Hon'ble Apex Court and as he des

ired

to incorporate in the reply to be
filed the decision of the Hon'ble

Supreme Court, one of which came
recently in Writ Petition (Civi
l) No. 546/2020

[Center for Public Interest Lit
igation V/s. Union of
India] decided on 18th

August, 2020, just a few
days before, some

time was taken for preparing the draft reply and that it is now on the verge of completion. He also submits that copies of all the decisions which, in his opinion, would render assistance to this Court, have already been filed on record by him. Considering the fact that copies of the orders and judgments rendered by the Hon'ble Supreme Court of India now have been filed on record and also that learned A.S.G.I. through his oral submissions made elaborately has adequately assisted us, we no longer experience any handicap in finally deciding the petition on merits, even withou

**t formal reply filed on behalf of
the Union of India.**

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

6. **According to Shri Anil Singh,
learned A.S.G.I. appearing for the
Union of India, this petition is
not maintainable as it is more of a
publicity interest litigation
with underlying political agenda.
He also
submits that the improper inten
tion of the petitioner can be gau
ged from
the fact that just in order to make**

as show of the petitioner having
locus standi in the matter, the pe
titioner paid donation of Rs. 1,
0 1/-
by cheque dated 8th May, 2020 and i
mmediately on the next day of 9th

May, 2020 the petitioner filed the public interest litigation petition.

According to him, the petitioner has no *locus standi* for the reason that

he is a donor to the fund and not the beneficiary of the fund and that it is the beneficiary of the fund who could be said to be a person

aggrieved if any action

or inaction on

the part of the Trustees is

considered by him

as against law, object of the Trust

is the welfare of the

beneficiaries.

This is also refuted by Shri Waghmare, the petitioner in person.

7. Learned A.S.G.I. further submits that the issues involved in this

petitioners substantially covered by the orders and judgments passed

by the Hon'ble Supreme Court in the cases of Shashwat Anand and others V/s. Union of India and others, Writ Petition (Civil) Diary

No. 10891/2020, Manohar Lal Sharma V/s. Narender and others, Writ Petition (Criminal) Diary

No. 10896/2020 and Center for Public Interest Litigation

V/s. Union of India, Writ Petition (Civil) No. 546/2020.

Shri Waghmare, the petitioner in person, however,

disagrees and

emphatically submits that the issues involved in all

these cases were undoubtedly different and do not cover the quest

ions

raised in the present petition.

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

Shri Anil Singh also submitst
that the provision conferring powe
r
upon the Hon'ble Chairperson to
nominate three trustees to the B
oard from
the category of eminent persons
does not cast any obligation to
exercise the power and that mere
conferral of the power cannot be
interpreted to mean that the pow
er must also be exercised forthw
ith and at all times.
He, therefore, sees no
illegality in absence of
nomination of three trustees fr
om
amongst the eminent persons. He
also submitst that a p
ointment of private Auditor is o
nly as per scheme
of the fund and that demand for pub
lic disclosure of accounts of th
e

fund is something already covered under the provisions of the Trust Act

and it is not applicable to the fund and it cannot be raised in a public interest litigation.

Thus, learned A.S.G.I. seeks dismissal of this petition to which Shri Waghmare is completely opposed.

Thus, learned A.S.G.I. seeks dismissal of this petition to which Shri Waghmare is completely opposed.

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

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

1 .

Shri Anil Singh, learned A. S. G. I. has raised question mark over the intention of the petitioner in person and also the *locus standi* of

the petitioner in person. We are, however, of the view

that it is not

necessary for us to go into these aspects of the matter for two reasons.

Firstly, there is hardly any material placed on record to discern the

improper intention on the part of the petitioner in person and though the petition has been filed just on

the next day of the petitioner remitting the donation of Rs. 1,01/-

through cheque, this fact by itself

would not be sufficient to attribute any il-
motive to the petitioner.
Secondly, this petition raises such questions as would deserve their
consideration and resolution more on merit of the matter rather
than
on some preliminaries relating to the standing and intention of
the petitioner in person.

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

"i. Issue appropriate directions to the respondent to immediately appoint-nominate other three trustees on the public trust created by union cabinet-through deed name and styled as "PM CARES FUND" created to fight emergent the a lth situation and crises created by coronavirus (Covid19) in India;

i. Further appropriated irections be issued to the

*respondents to appoint-
nominate at least two
trustees (Out of 3) from
the opposition parties fro*

*m
Lok Sabha and Rajya Sabha
in order to have proper
check and balance and
also to strengthen the
confidence of general/pub
lic of the country and for
transparency about the
high profile National
Dedicated Fund called as P
M Cares Fund;*

*i. By appropriate
order and directions
quash and
set aside/cancel the unil
ateral decision taken
by the respondent no. 1 to
5 (without there
being full Board of Trustee
s) to appoint M/s SARC
Associates, Chartered
Accountants, New
Delhi as auditor for PM
Cares Fund and thereby fu
rther order to cancel the
said appointment
forthwith; with
further directions to appo
int independent auditor fo
r PM
Cares Fund only after form
ation - appointment of
full Board of Trustees as p
er the Rules and Guideline
s of the PM Cares Fund;*

*iv. Further issue
appropriate directions
to
immediately make public t
he entire funds received
as on date, whether domes
tically or from*

*oversees i.e from NRIs
and foreign nationals
and/or*

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

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

14. In the case of Shashwat Anand (supra) the questions raised, insofar as they pertained to the fund, were about the justification

nfor
constitutionofthefundinview
ofPrimeMinistersNationalRel
ief Fund (N.R.F.)and also
constitution
ofthesimilarfund underthe
DisasterManagementAct, 20
5andtheneedforissuingadirec
tion
fortransferofmoneysreceived
inthefund to thefundsalready
createdearlier. Therelevantp
rayersmadeinthispetitionwer
eofthe followingnature.

“b)

*Issueawrit, orderordirection, in
thenature
ofMandamusdirectingtheCentral
Governmentand
theStatestotransfer/creditthef
unds, collectedand contained in
thePMNRFand thePM-CaresFund,
andtheCM-
ReliefFunds, totheNationalDisa
ster ResponseFund
(NDRF) establishedbytheCentra
/
GovernmentunderSection46andt
heStateDisaster*

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 (PEs), creation and maintenance of quarantine centers, etc. and matters ancillary and incidental thereto, as far as the instant COVID-19 pandemic is concerned, in the larger good of the citizen of India.

c) Issue 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

*st
of justice and fairness.”*

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

15. In Manoharlal Sharma's case
(supra) also, the issues involv
ed were different from
the ones involved herein which i
se evident from the
reliefs sought in that petition
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These reliefs claimed a declara
tion
about the fund being unconstitu
tional and a direction for trans
ferring
the entire amount received in th

efundtotheConsolidatedFundo
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India .

**Therelevantprayerclauses, fo
rthesakeofconvenience, are
reproducedasbelow:-**

***“a)
Bepleasedtoquash/ceaseimpug
nedPublic
trust“PrimeMinister’sCitizenA
ssistanceandRelief
inEmergencySituationsFund(PM
-CARESFund)” being
unconstitutional,violated
Art26 ,26 (2), 267&
284oftheConstitutionofIndia, a
ndultra
virestotheConstitutionofIndia
AND***

***b) Be pleased to issue
writofmandamusto
transferentireamounto
fdonationreceivedinPM
care fund accountby the
R-1 to R-4 into the
consolidatedfundofInd
ia.”***

Byorderpassed on 13 . 4 . 2020

**theHon’bleSupremeCourt
dismissedthispetition.**

**16. In the third
petition, Center for Public
InterestLitigation**

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

*“C.
Issue writ, order or direction to the Union of India to utilize NDRF for the purpose of providing assistance in the fight against COVID-19 pandemic in*

*compliance with Section 46 of the
DM Act, all the
contributions/grants from
individuals and*

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

As regards this prayer clause (c), the Hon'ble Apex Court has held that there is no statutory prohibition for the Union of India utilizing the NDRF for providing assistance in the fight of COVID-19 in accordance with the guidelines issued for Administration of NDRF and that there is no statutory prohibition in making any contribution by any person or institution in the NDRF as per Section 46(1)(b) of the Act of 2015.

17. The discussion thus far made would make it clear that the issues involved in this petition are quite different and distinct from the ones involved in the aforesaid petitions decided by the Hon'ble Supreme Court of India.

However, we must make it clear here that in spite of such distinction in the issues involved, there are some observations made by the Hon'ble Apex Court which would not only be relevant for us to bear in mind while examining the issues involved here but they would also bind us to the extent they decide the issues

which arise even indirectly in
the present petition.

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

19. **F**irst relief, as aforesaid, is founded by the petitioner on the premise that the guidelines supplied to the petitioner-in-person by the Authorities of the fund clearly mention that the Chairperson of the Board of Trustees of the fund has power to nominate three trustees to the Board who shall be eminent persons in the field of research, health, science etc. He submits that as per the information supplied to him under the Right to Information Act, so far, no appointment from the category of eminent persons in the field of research, health, science etc. has been made.

According to him, without such appointment having been made, the Board of Trustees would be incomplete and any decision taken by the Board of Trustees would not be the decision of the Board of Trustees as such. He submits that these are the own guidelines of the fund and yet the fund has failed to follow the guidelines. He further submits that such failure brings in opacity to the functioning of the fund. This is also disagreed to by learned A.S.G.I.

20. The petitioner has filed on record the information that he has received under the provisions of Right to Information Act. The information supplied to him in

responsetohisquestion
regarding nomination ofthree
trustees(page 28 ofthe
paperbok)isas follows:-

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

According to this information, the Hon’ble Chairperson of the Board has been vested with power to nominate three trustees from among the eminent persons in various fields as stated therein. The words “has the power to nominate” are clearly enabling. They only confer capacity, power or authority and imply a discretion (See

Commissioner of Police Bombay Vs. Gordhandas Bhanji, AIR (39)

1952 SC 16, P 20). This provision nowhere says that it shall be mandatory for the Hon'ble Chairperson to nominate three trustees.

There is nothing in the provision which even hints at some duty to exercise the power.

Creation of power in an Authority without any accompanying duty only equips the Authority with discretion to exercise the power and in this sense conferral of power upon the Hon'ble Chairperson of the Board of Trustees is nothing but an

enabling act. Whenever any enabling provision, pure and simple and

without any obligation, is made, it only facilitates doing of a thi

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particular way and such provision
not stop there only, without going
any

further. Such a provision cannot
be interpreted as to mandate the
Authority on whom
the power is conferred to
exercise the power

rather, it would have to be considered as optional and discretionary power.

Exercise of power, which is discretionary and not obligatory, depends upon various facts and circumstances obtaining in a given situation and also the guidelines, if there are any as regards the manner in which the power is to be exercised.

So, it is for the authority to use its discretion and decide on the question of exercising

the power in the facts and circumstances of the case. There may be a

case where conditions in which a power is to be exercised are also stated. In such a case only, on fulfillment of the conditions, the power

conferred becomes annexed with a duty to exercise it in that manner (See *The Official Liquidator Vs. Dharti Dhan (P) Ltd.*, AIR 197 SC 740, Page 745). In such a case only, in an effort to discern the object of the conditions prescribed, one can say, to use the words of LORD BLACKBURN, "the enabling words are construed as compulsory whenever the object of the power is to effectuate a legal right" (See *Julius Vs. Bishop of Oxford* (180) 5 AC 214, P. 24, *Punjab Sikh Regular Motor Service, Moudhapara, Raipur Vs. Regional Transport Authority Raipur and another*, AIR 196 SC 1318 and *Sub-Committee of Judicial Accountability Vs. Union of India and others*, AIR 1992 SC 320, Page 352). In the present case, no such conditions are prescribed

at a land the provision is enabling
only without any duty annexed to
it.

21. It should be clear now that an enabling provision pure and simple, neither imposes any duty nor confers any right. Article 16(4) of the Constitution of India not imposing any constitutional duty, has also been interpreted in the same manner in several judgments of the Hon'ble Supreme Court. This constitutional provision has been interpreted to be only confer in the discretion of the State. This has been held by a Five Judges Bench of the Hon'ble Supreme Court in the judgment delivered in the case of *Ajit Singh and others (I) V/s. State of Punjab and others* [(19

9) 7 SC

209], in which reference has been made to similar interpretation given in the earlier judgment of the Hon'ble Supreme Court.

It would be worth reproducing the observations of the Hon'ble Apex Court made in paragraph Nos. 29 and 30 herein and they read as under:

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"29. We may in this connection point out that the attention of the learned Judges who decided *Ashok Kumar Gupta*⁶ and *Jagdish Lal*³ was not obviously drawn to a direct case decided by a Constitution Bench in *C.A. Rajendran vs. Union of India*⁸ which arose under Article 16(4). It was clearly laid down by the five Judge Bench that [Article 16\(4\)](#) was only an enabling provision, that [Article 16\(4\)](#) was not a fundamental right and that it did not impose any constitutional duty. It only conferred a discretion on the State. The passage in the above case reads as follows:

"Our conclusion therefore is that [Article 16\(4\)](#) does not confer any right on the petitioner and there is no constitutional duty imposed on the Government to make a reservation for Scheduled Castes and Scheduled Tribes, either at the initial stage of recruitment or at the

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

(emphasis supplied)

30. The above principle was reiterated in two three-Judge Bench judgments in *P & T Scheduled Caste/Scheduled Tribe Employees' Welfare Assn. (Regd.) vs. Union of India*⁹ and in *State Bank of India Scheduled Caste/Scheduled Tribe Employees' Welfare Assn. vs. State Bank of India*¹⁰. In fact, as long back as in 1963, in *M.R. Balaji vs. State of Mysore*¹ (SCR at p. 474) which was decided by Five learned Judges, the Court said the same thing in connection with *Articles 15(4) and*

Article 16(4). Stating that Article 15(4) and 16(4) were only enabling provisions, Gajendragadkar, J. (as he then was) observed:

"In this connection, it is necessary to emphasise that Article 15(4) like Article 16(4) is an enabling provision, it does not impose an obligation, but merely leaves it to the discretion of the appropriate government to take suitable action, if necessary."

(6. (1977) 5SC 201, 3. (1977) 6SC 538, 8. AIR 1968 SC 507, 9. (1981) 4SC 147, 10. (1966) 4SC 191, 11. AIR 1963 SC 649)

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Thus, we find that even though the power has been conferred upon the Hon'ble Chairperson to nominate three trustees, the power is of enabling nature only making it possible for the Authority to nominate three trustees to

theBoard, and

thatthereisnofurther

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

23. We are, therefore, of the view that there is no merit in the submissions made in support of the first relief claimed in the petition by the petitioner in person and that there is great substance in the argument made by the learned A.S

. G. I. opposing the same and as such
h
the first relief deserves rejection by this Court.

24 These second relief, as aforesaid, is about issuance of direction to the Authority of the fund to nominate at least two out of three Trustees in the category of eminent persons from the opposition parties from Lok Sabha and Rajya Sabha with a view to introduce a appropriate system of checks and balances and also to strengthen the confidence of general public of the country, in the interest of transparency in functioning of the fund. According to the petitioner in person, this is essential because

seas per the information supplied to him

(page 28) the fund is a dedicated national fund with primary objective of

dealing with any kind of emergency or distress situations such as the

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

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

constitutional or otherwise
of the fund and on the other hand
, he
seek to introduce amendments to
the Trust Deed on the ground that
t
the provision made for nomination
of eminent persons as trustees
on
the Board of Trustees is inadequate
to address the concerns about

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

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

In paragraph 69 of the judgment, the Hon'ble Apex Court has held thus :-

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

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

**positions and perspectives are
also there on the Board of Truste
esso**

that the ultimate beneficiary is the person named in the fund money -

However, the wish son nurtured by the petitioner in person, in our considered view, cannot be fulfilled as it has no ring in law. Once it is settled that the P.M. CARE Fund is a charitable trust registered

under the Registration Act, it requires no further clarification from the

Court that such a registered charitable trust would be governed by its

own Deed of Trust on the basis of which the trust gets its registration and special laws ap

licable to it. If there is no provision made in the

Trust Deed for inducting some mem

bers of the opposition political parties into Board of Trustees by nomination, and there is also no such requirement of law, which is the case here without any dispute, there is noway that an outsider like the petitioner in person would knock at the door of this Court to invoke the extraordinary jurisdiction of this Court to seek the direction to the trust to amend its Trust Deed. The directions sought in these second prayer clause is really a command for amending the Trust Deed which can not be initiated at the behest of a person stranger to the Trust like the petitioner in person in a pub

lic interest litigation, much less by invoking extraordinary writ jurisdiction of this Court under Article 26 of the Constitution of India. If any such direction is given, it would only amount to what the learned A.S.G.I. calls, rewriting of the Trust Deed which is not

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

28. There is also another angle f
rom
which the issue regarding need
for having some members of the op
osition political parties on th
e
Board of Trustees deserve to be
examined. In paragraph 4 of the
memorandum
of petition, the petitioner in p
erson has categorically
stated that he is not challenging
and/or disputing the creation of
the public trust in the name and
style as "P. M. CARES Fund" on
any

ground, whether constitutional or otherwise. This is again repeated in paragraph 5 of the memorandum of petition. But, through the prayer clause (i), the petitioner in person has sought relief, *albeit* in the name of transparency, which is nothing but impliedly questioning the correctness of the provision made in the Trust Deed regarding nomination of three trustees from among eminent persons on the Board of Trustees. Validity and correctness of the provisions governing the fund are already upheld by the Hon'ble Apex Court when it dismissed petition of Manohar Lal Shamra (*supra*) and so this grou

nd

of challenge cannot be heard by us

. Still, it is contended by the

petitioner in person that the fu

nd does not belong to any particu

lar

party and that it is a fund dedica

ted to national cause and, there

fore,

at least two major political par

ties must find their representa

tion in

the Board of Trustees. We can only say that the argument is fallacious when we consider the character of the fund which has been held by the Hon'ble Apex Court to be a charitable trust registered under the Registration Act, which does not receive any budgetary support or any government money. This is sufficient to indicate that what of the founding trustees and not the wishful thinking of outsiders in such a case, is what matters, is what prevails over the desire of strangers, and is what will receive reverence from law, as long as the will is expressed by the trustees in tandem

with law, about which there can be no dispute here.

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

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

If the relief sought by the petitioner for nomination of at least two trustees from the opposition parties is granted, this Court would be failing in its duty to abide by the forewarning issued by

the

Hon'ble Supreme Court that this
need of the hour no exception can
n

be taken to the constitution of a
public charitable trust, namely
y, P.M.

CARES Fund, for the relief sought
is in the nature of correcting the
e

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

29. The third

relief sought by the petitioner in person is about issuance of a direction to quash and set aside the unilateral decision taken by the fund, without there being a full Board of Trustees, to appoint M/s SARC Associates as Char

tered Accountant for conducting the audit of the fund.

30. The petitioner in person contends that as three trustees have not been nominated on the Board of Trustees, the present Board of Trustees is incomplete and as such it is incapable of taking any decisions. He maintains that even if a decision has been taken by it to appoint a private Chartered Accountant, the decision is without "wisdom" of the Board of Trustees.

Shri Anil Singh, learned A.S.G. I. submits that the fact that the power to nominate three trustees conferred upon the Hon'ble Chairperson of the fund is an enabling equipment, it itself is sufficient

ntto show that it would
be entirely
within the discretion of the Hon
'ble Chairperson to nominate or
not

nominate three eminent person on the Board of Trustees, which would make it clear that presence of three nominated persons on the Board of Trustees is optional. He also relies upon the view recently taken by this Court in the case of Deepak S/o Sampatrao Sane and others V/s . PM CARES Fund and others (LD-VCP . I . L . NO . 618/2020), decided on 23 . 07 . 2020 that a power to distribute the fund money amongst needy persons is discretionary and, therefore, this Court left it to the Authorities of the fund to decide the question in their own wisdom . Thus, in the opinion of learned A .

S.G.I., the third relief can also not be granted.

31. We have already found that the power of the Hon'ble Chairperson of the fund tonominatethethreeeminentpersonsastrustees is enabling in its nature, not mandating the Hon'ble Chairperson tonominatethethreetrustees always and at all times. An enabling provision simpliciter, by its very nature, facilitates doing of a particular act by the Authority but it never compels the Authority to do that particular act and leave it to the discretion of the Authority to perform it, as per the exigency of the situation. In this sense, an

enabling provision confers a discretion on the enabled Authority and that being so, now it can lie to compel the Authority to exercise the discretion and that to the way it is desired by a party. This is also the view expressed by us in the case of Depak S/o Sampatrao Sane

and others V/s . PM

CARESFund and others (supra) .

So, what we find

here essentially and

as rightly submitted

by Shri Anil Singh,

learned A . S . G . I . , that presence

of the nominated persons as trustees

on

the Board of Trustees is optional

-

It then goes without saying that

absent the nominated trustees, B

oard of Trustees is neither defi

cit, nor

incomplete, nor incapable of ta

king any decision in its wisdom .

Shri Waghmare, the petitioner

in person refers to "wisdom" of

the Board of Trustees in taking a

decision .

He, however, does not

elaborate the concept of "wisdom" of the Board of Trustees, except for

assertion that "wisdom" is reflected only when a decision is taken by

all the members of the Board of Trustees, *ex officio* and nominated.

"Wisdom" means the power of true and right

discernment :

conformity to the course of action dictated by such discernment, god

practical judgment, common sense, a high degree of knowledge, learning.

(See New

International Websters Comprehensive Dictionary,

Deluxe Encyclopedic Edition, First Indian Re-print 20

1, page 145).

This definition connotes that the word "wisdom" is suggestive of the ability to think and act using knowledge, experience, understanding, common sense and insight and it indicates unbiased and wise judgment based upon knowledge and application of mind. To put it plainly, a decision taken in "wisdom" would be a decision taken after application of mind by the makers of the decision. If the decision is

taken on application of collective mind by the makers of the decision even when some of the members of the decision-making body whose presence is not mandatory are absent, it would be a decision taken in the "wisdom" of the body of decision makers. It would, however, be a different matter when a decision is taken in absence of the members whose presence is mandatory. However, it is not the case here and so we need not look at such a different case. The decision to appoint private but approved Chartered Accountant in this case has been collectively and on application of

fmindbythetrusteespresenton
the
BoardofTrustees, asseenfrom
thematerialavailableonrecor
d, and,
therefore, thereisnogainsayi
ngthathedecisionissansthe“w
isdom” ofBoardofTrustees.

32. Thediscussionsomadewouldl
eadustoconcludethatdecision
oftheBoardofTrusteestoap
ointM/sSARCAssociatesasChar
tered Accountantisthe
decision taken by the Board
ofTrusteesin its wisdom
andknowledgeanduponapplicati
onofmindand, therefore,
itcan
otbeassailedonthegroundofit
beingnotoftheBoardof
Trustees.

Thethirdprayerthuswouldalso

meet the same fate as the
earlier two prayers.

3

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

the disbursement of the fund money, we must say that this relief as rightly submitted by the learned A.S.G.I., is already adequately taken care of by the provisions made in the Registration Act, 1908 and the Trust Act applicable to the fund which is a charitable trust registered under the Registration Act. Of course, it is the contention of the petitioner in person that as the public money is lodged in the fund, the fund is within public domain and in any case, it is not a party fund and, therefore, public disclosure of the receipts and outgoings into and from

the fund is necessary.

In the opinion of learned A. S. G. I
., the

fund is out of the public domain as the Hon'ble Apex Court has already held that the trust does not receive any budgetary support or any government money.

34 In this petition, the question involved is really not about the non-disclosure of receipts and disbursements but it is about ensuring that the receipts into the fund are from proper sources and the outgoings from the fund are consistent with the objects of the fund for which purpose public disclosure is essential.

In other words, the real question is-

why the public disclosure is rather

han why not the public disclosure?

There can be not two opinions about

the underlying object

of public disclosure .

It is of ensuring proper utiliza

tion of the fund

money sourced from

proper persons . This very objec

t can be seen to

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

35. Reason why we hold so is that the fund would be subject to and governed by the framework of law provided under the applicable Trust Act. In different States, different

nt Acts have been enacted by the State

Legislatures but basically they contain more or less similar provisions

and have a similar framework within which the affairs of the Trust and

its properties are to be administered and managed. These Trusts Acts

have several provisions touching on various aspects of which relevant aspects are as follows:-

(i)

Appointment of the Auditor to prepare balance sheet of the public trust, and to report their regularities, if any;

(i)

Duty of the Auditor to mention in his report irregularity, illegality

or improper expenditure, failure
or omission to recover
money or other property belong
ing to the public trust, if any an
d so on and so forth;

(i)

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

(iv) Provision of a appeal to the Charity Commissioner when Assistant Commissioner reject an application of the person interest

ed

in a public trust or otherwise;

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

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

It can thus be seen that various statutory provisions contained in the applicable Trust Act provide an effective mechanism to ensure that the working of the charitable trust does not go haywire and that its affairs and properties are managed in a way as to fulfil the objects of the trust. When such mechanism is available, the

Hon'ble Supreme Court has time and again cautioned entertainin
g of
civil writ petitions and even pub
lic interest litigations for re
dressal of
the grievances relating to char
itable trust.

In one such case, *Jaipur*

Shahar Hindu Vikas Samiti V/s. State of Rajasthan and others [(2014)]

5 SC

530] the Hon'ble Apex Court had an occasion to consider various provisions contained in Rajasthan Public Trust Act, 1959 and their efficacy to provide a forum for effective redressal of all the disputes pertaining to the trust. The Supreme Court referred to various provisions contained in the Act in paragraph 37 and took a view that when the statutory provisions give extensive power to the Assistant Commissioner and Commissioner, in some cases, the civil Courts would have no jurisdiction to adjudicate on the issues of the public trusts.

The Hon^{ble} Supreme Court by making observations in paragraph 49 has even discouraged the tendency of the Court to entertain public interest litigations in relation to the issues arising from the affairs of the public trust. These observations appearing in paragraph 49, being relevant there, are reproduced thus :-

“49.

The concept of public interest litigation is a phenomenon which is evolved to bring justice to the reach of people who are handicapped by ignorance, indigence, illiteracy and other down trodden people. Through the public interest litigation, the cause of several people who are not able to approach the Court is espoused. In the guise of public interest litigation, we are coming across several cases where it is exploited for the benefit of certain individuals. The courts have to be very cautious and careful while entertaining public

interest litigation. The Judiciary should deal with the misuse of public interest litigation with iron hand. If the public interest litigation is permitted to be misused the very purpose for which it is conceived, namely to come to the rescue of the poor and downtrodden will be defeated. The courts should discourage the unjustified litigants at the initial stage

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

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

rthprayerhasalreadyworkedit
self out.

36. There is one more
dimension involved in this
public
interest litigation which, we f
eel must be dealt with. The dimen
sion is
about judicious use of public int
erest jurisdiction so carefully
crafted
by the Hon'ble Apex Court over a p
eriod of time. The jurisdiction
is
exceptional in nature and power
ful in its impact. It was develop
ed as
an effective remedy for the redre
ssal of the grievances of margin
alized and oppressed.
That was the intention on which
public interest
jurisdiction was judicially rec

ognized in the situations such as
those in

*Bandhua Mukti Morcha V/s. Union of
India and others* [AIR 1984 SC
802] .

The hallmark of a public interest
litigation is that a class of

persons,
unable to pursue individual rights, is indirectly before the Court through a person whom moves the Court, having no personal interest in the outcome of the proceedings apart from his general standing as a citizen before the Court. Over a period of time, it was realized that this jurisdiction was capable of being and had been brazenly misused by persons slinking with personal agenda. At one end of the spectrum of such misdirected cases were petitions motivated by a desire to seek publicity and at the other end

lay the petitions instituted at the behest of business or political rivals to settle personal scores behind the facade of the public interest litigation. In such petitions more often than not the true face of the litigant behind his outwardly gentleness is seldom revealed. These concerns have been reflected in the judgment of the Hon'ble Supreme Court in the State of Uttaranchal V/s. Balwant Singh Chauhan and others [(2010) 3 SC 402], when it observed in paragraph 143 as under:-

“Unfortunately, of late, it has been noticed that such an important jurisdiction which has been carefully carved out, created and nurtured with great care and caution by the courts, is being blatantly abused by filing some petitions with oblique motives. We think time has come when genuine

and bonafide public interest litigation must be encouraged whereas frivolous public interest litigation should be discouraged. In our considered opinion, we have to protect and preserve this important jurisdiction in the larger interest of the people of this country but we must take effective steps to prevent and cure

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

37. The Hon[’]ble Apex Court has, time and again, issued cautions against casual entering public interest litigation. Just as misuse of public interest litigation has been a serious matter of concern for a judicial process, it[’] s overuse too has been. We must bear in mind that Courts have a long list of pending cases where the personal liberty of citizens is involved.

Those who await trial or resolution of appeals against the orders of conviction have a legitimate

expectation of a fairly just and
it would be a travesty of justice
for the
resources of the legal system
to be consumed on an
avalanche of
misdirected petitions purportedly
filed in the public interest
which, upon due scrutiny, are
found to promote a
personal business or
political agenda. This has spawned
an industry of vested interests in
litigation. The Hon'ble Apex Court
has, therefore, warned that
here is
a grave danger that if such a state
of affairs is allowed to continue,
it would seriously denude the
efficacy of the judicial system
by procrastinating the
ability of the Court to devote
its time and

resources to cases which
legitimately require attention
, worse still,
such petitions pose a great dang
er to the credibility of the judi
cial process.

The Hon'ble Supreme Court has fu
rther observed that there
is a threat that the judicial pro
cess will be reduced to a charade,
if

disputes on illegal parameters so
occupy the judicial space. A
useful reference in
this regard may be made to
the observations of the
Hon'ble Apex Court in the case of
*Union of India and others V/s. J.D.
Suryawanshi* [(201) 13SC
167, page 171].

38. The Hon'ble Supreme Court has
also held that not every
matter of public interest or curi
osity can be subjected to the scr
utiny of
Court through a public interest
litigation and it is only when th
ere is
an injury to public because of de
reliction of constitutional ob
ligations on the part of the
government, Court can
perhaps scrutinize the

impugned action. These observations of the Apex Court have appeared in the case of *BALCO Employees' Union (regd.) V/s. Union of India and others* [(2022) 2 SC 33]. The observations made in paragraph 97 being relevant are reproduced as under: -

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

39. *In Sachidanand Pandey and another V/s State of West Bengal and others* [(1987) 2 SC 295] the Hon'ble Supreme Court highlighted the necessity to delineate parameters of public interest litigation. It noted the fact that in present times public spirited litigants rush to Court to file cases in profusion under this attractive name. It further noted that such class action must, however, inspire confidence of Court and amongst public and must be above suspicion. The Hon'ble Supreme Court then went on to hold that it is only when Courts are apprised of gross violation of fundamental rights by a group or class of action or when b

as if human rights are invaded and when there are complaints of such acts sending shock waves to judicial conscience that the Courts would leave aside procedural shackles to hear such petitions and extend their jurisdiction under available provisions for remedying hardships and providing relief to the needy, the underdogs, the neglected, and the society in general.

40. Having considered the nature and purpose of the public interest litigation jurisdiction and also its perils and pitfalls, a doubt immediately arises in our mind as to whether or not a prayer asking

for public disclosure of the receipts into and outgoings from the fund

could be looked into even cursorily and on a deeper contemplation on

the issue, our answer is in the negative for more reasons than one

-

Firstly, we have already found that in the Trust Act which is applicable to the fund there is already provided an effective mechanism for achieving the purpose for which the public disclosure has been sought in this petition.

Any person having interest in the trust is free to resort to that mechanism for redressal of his grievance, if any.

Secondly, as held in BALCO Employees Union (Regd.)

(supra), every

matter of public interest or curiosity cannot be the subject matter of

PII and that the Constitutional Courts are not expected to conduct the

administration of the country,
or to be more precise, of a charitable trust.

If the direction assought for by
the petitioner in person is
granted, it would only amount to in
terference in the administration of

the affairs of the fund and also po
wer of the Authorities to exercise
superintendence and

control over the affairs and
properties of a

charitable trust like the fund
under the applicable Trust Act.

When statutory provisions
comprehensively covering
all aspects of the

administration and management
of the trust and its properties e

exist and they also provide a
mechanism for effective

redressal of

grievances in a specific manner
, there is no room
left for hearing the
very grievances by way of a public
interest litigation.

Thirdly and

lastly a case must be made out with
proper research and study that
there is a gross violation of con
stitutional or statutory provi
sions, if the
exceptional public interest ju
risdiction is sought to be invoked,
which

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

41. There is yet another perspective to look at the afore-stated fourth prayer clause. The contributions which are to be made to the fund are voluntary in nature and that there is no compulsion for anyone to donate. If any person has any doubt about the application of the money, he intends to donate, may we remind such person of the words of Falstaff, a cowardly character portrayed by William

Shakespeare in his play Henry IV
, (Henry The Fourth Part 1 Act 5,
Scene 4, 15-
121) that, "***The better part of Valo
uris Discretion; in the
which better part, I have saved my lif
e***". Here "life" can be taken to be
"money". So, such a person
would well be within
his right to not donate his
money to the fund. From this
perspective also no
insistence can be made by a
person donating his money in
his
discretion upon making of publi
c disclosures of utilization of
the fund
money on a public platform
by passing the proper platform
provided under the Trust Act ap
licable to
a charitable trust like the "P.M
- CARES Fund".

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

43. **Thepetitionstandsdismissed
.Nocosts.**

4 .

**Thisjudgmentandorderbecommun
icatedtotheAdvocates
apearingfortheparties,eithe
rontheemailad
ressoronWhatsAp
orbysuchothermodeasispermis
sibleinlaw.**

JUDGE

JUDGE