

IN THE HON'BLE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) No. 3430 of 2020

IN THE MATTER OF:

SAMYAK GANGWAL

...PETITIONER

VERSUS

CENRTRAL PUBLIC INFORMATION OFFICER,
PRIME MINISTER OFFICER & ANR.

...RESPONDENTS

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KIRTIMAN SINGH

Central Government Standing Counsel
Advocate for Union of India
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Date:14.09.2020

Place: New Delhi

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**PRELIMINARY AFFIDAVIT ON BEHALF OF
RESPONDENTS**

I, Pradeep Kumar Srivastava aged about 42 years, S/o Shri Surendra Prasad Srivastava working as Under Secretary at Prime Minister's Office having its office at South Block, New Delhi, do solemnly swear affirm and declare as under: -



1. That I am well conversant with the facts of the case and as such I am competent to swear this affidavit in my official capacity.
2. At the very outset I deny all the allegations, statements and contentions raised in the present petition to the extent that the same are contrary to and/or inconsistent with what is stated herein. Unless any averment is specifically admitted, the same may be treated as denied.

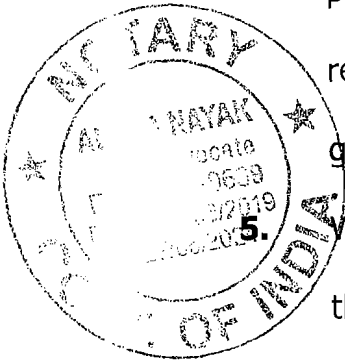
[Handwritten Signature]

प्रदीप कुमार श्रीवास्तव
Pradeep Kumar Srivastava
अवर सचिव / Under Secretary
प्रधानमंत्री कार्यालय / Prime Minister's Office
नई दिल्ली / New Delhi

3. I state that I am filing this preliminary reply to oppose the admission of the petition and grant of any interim order.

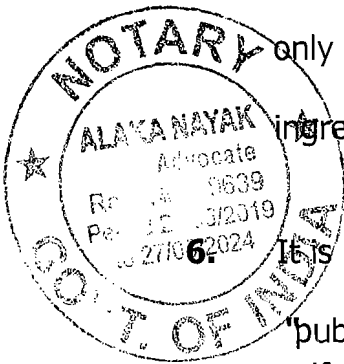
PRELIMINARY OBJECTIONS/SUBMISSIONS

4. At the outset, it is submitted that the writ petition is not maintainable as the petitioner has admittedly not availed the statutory remedies available under the RTI Act, 2005 and has straight away approached this Hon'ble Court by way of the present petition without pointing out as to why the statutory remedies are either not available or are not efficacious. On this ground alone, the present petition deserves to be rejected.



5. Without prejudice to the above, it is respectfully submitted that the present petition is even otherwise without merit. The answering Respondent most respectfully submits that PM CARES Fund has been set up as a public charitable trust and is not created by or under the Constitution of India or by any law made by the Parliament or by any State Legislature. It is respectfully submitted that this Trust is neither intended to be or is in fact owned, controlled or substantially financed by any Central Government or State Government or any instrumentality of the any Government. In other words, there
-

is no control of either the Central Government or any State Government/s, either direct or indirect, in functioning of the Trust in any manner whatsoever. It is submitted that when the mandatory statutory requirements of section 2[h] of the RTI Act are not in existence in case of the respondent public trust, composition of the board of trustees can never be a determinative factor to ascertain whether the respondent is a "public authority" or not. It is respectfully submitted that the only determinative test is the existence or one or some or all ingredients mentioned in section 2[h] and none else.



It is submitted that Section 2(h) of the Act provides as under:-

"public authority" means any authority or body or institution of self-government established or constituted-

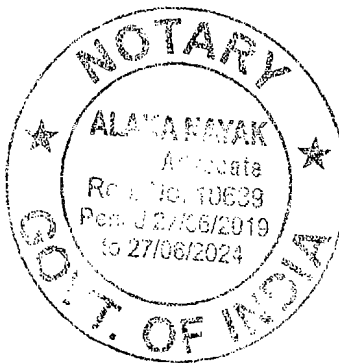
- (i) by or under the Constitution;
- (ii) by any other law made by the Parliament;
- (iii) by any other law made by State Legislature;
- (iv) by notification issued or order made by the appropriate Government,

and includes any-

- (v) body owned, controlled or substantially financed;
- (vi) non-Government organization substantially financed,

directly or indirectly by funds provided by the appropriate Government.

7. It is respectfully submitted that the Hon'ble Supreme while interpreting the above provision, in Thalappalam Ser. Coop. Bank Ltd. and Ors.Vs State of Kerala and Ors reported in 2013 (16) SCC 82 has been pleased to hold as under: -



"27. Legislature, in its wisdom, while defining the expression "public authority" Under Section 2(h), intended to embrace only those categories, which are specifically included, unless the context of the Act otherwise requires. Section 2(h) has used the expressions 'means' and 'includes'. When a word is defined to 'mean' something, the definition is prima facie restrictive and where the word is defined to 'include' some other thing, the definition is prima facie extensive. But when both the expressions "means" and "includes" are used, the categories mentioned there would exhaust themselves. Meanings of the expressions 'means' and 'includes' have been explained by this Court in Delhi Development Authority v. BholaNath Sharma (Dead) by L.Rs. and Ors. MANU/SC/1038/2010: (2011) 2 SCC 54, (in paras 25 to 28). When such expressions are used, they may afford an exhaustive explanation of the meaning which for the purpose of the Act, must invariably be attached to those words and expressions.

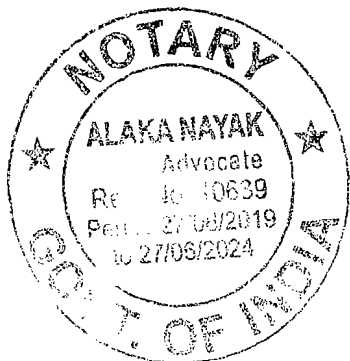
28. Section 2(h) exhausts the categories mentioned therein. The former part of 2(h) deals with:

- (1) an authority or body or institution of self-government established by or under the Constitution,*
- (2) an authority or body or institution of self-government established or constituted by any other law made by the Parliament,*
- (3) an authority or body or institution of self-government established or constituted by any other law made by the State legislature, and*
- (4) an authority or body or institution of self-government established or constituted by notification issued or order made by the appropriate government.*

29. *Societies, with which we are concerned, admittedly, do not fall in the above mentioned categories, because none of them is either a body or institution of self-government, established or constituted under the Constitution, by law made by the Parliament, by law made by the State Legislature or by way of a notification issued or made by the appropriate government. Let us now examine whether they fall in the later part of Section 2(h) of the Act, which embraces within its fold:*

(5) a body owned, controlled or substantially financed, directly or indirectly by funds provided by the appropriate government,

(6) non-governmental organizations substantially financed directly or indirectly by funds provided by the appropriate government.



30. The expression 'Appropriate Government' has also been defined Under Section 2(a) of the RTI Act, which reads as follows:

2(a). "appropriate Government" means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly-

(i) by the Central Government or the Union territory administration, the Central Government;

(ii) by the State Government, the State Government.

31. *The RTI Act, therefore, deals with bodies which are owned, controlled or substantially financed, directly or indirectly, by funds provided by the appropriate government and also non-government organizations substantially financed, directly or indirectly, by funds provided by the appropriate government, in the event of which they may fall within the definition of Section 2(h)(d)(i) or (ii) respectively. As already pointed out, a body, institution or an organization, which is neither a State within the meaning of Article 12 of the Constitution*

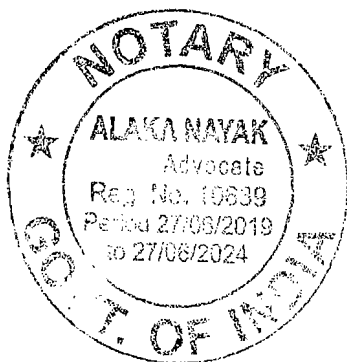
or instrumentalities, may still answer the definition of public authority Under Section 2(h)(d)(i) or (ii).

(a) *Body owned by the appropriate government-* A body owned by the appropriate government clearly falls Under Section 2(h)(d)(i) of the Act. A body owned, means to have a good legal title to it having the ultimate control over the affairs of that body, ownership takes in its fold control, finance etc. Further discussion of this concept is unnecessary because, admittedly, the societies in question are not owned by the appropriate government.

(b) *Body Controlled by the Appropriate Government*

A body which is controlled by the appropriate government can fall under the definition of public authority Under Section 2(h)(d)(i). Let us examine the meaning of the expression "controlled" in the context of RTI Act and not in the context of the expression "controlled" judicially interpreted while examining the scope of the expression "State" under Article 12 of the Constitution or in the context of maintainability of a writ against a body or authority under Article 226 of the Constitution of India. The word "control" or "controlled" has not been defined in the RTI Act, and hence, we have to understand the scope of the expression 'controlled' in the context of the words which exist prior and subsequent i.e. "body owned" and "substantially financed" respectively. The meaning of the word "control" has come up for consideration in several cases before this Court in different contexts. In *State of West Bengal and Anr. v. Nripendra Nath Bagchi* MANU/SC/0310/1965 : AIR 1966 SC 447 while interpreting the scope of Article 235 of the Constitution of India, which confers control by the High Court over District Courts, this Court held that the word "control" includes the power to take disciplinary action and all other incidental or consequential steps to effectuate this end and made the following observations:

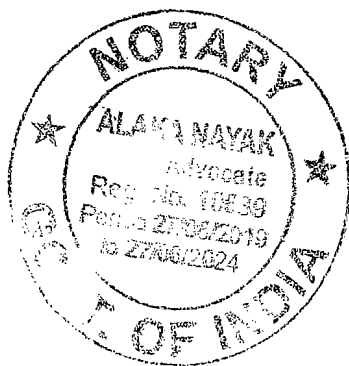
The word 'control', as we have seen, was used for the first time in the Constitution and it is



accompanied by the word 'vest' which is a strong word. It shows that the High Court is made the sole custodian of the control over the judiciary. Control, therefore, is not merely the power to arrange the day to day working of the court but contemplates disciplinary jurisdiction over the presiding Judge.... In our judgment, the control which is vested in the High Court is a complete control subject only to the power of the Governor in the matter of appointment (including dismissal and removal) and posting and promotion of District Judges. Within the exercise of the control vested in the High Court, the High Court can hold enquiries, impose punishments other than dismissal or removal....

32 . The above position has been reiterated by this Court in Chief Justice of Andhra Pradesh and Ors. v. L.V.A. Dixitulu and Ors. MANU/SC/0416/1978 : (1979) 2 SCC 34. In Corporation of the City of Nagpur Civil Lines, Nagpur and Anr. v. Ramchandra and Ors. MANU/SC/0419/1981 : (1981) 2 SCC 714, while interpreting the provisions of Section 59(3) of the City of Nagpur Corporation Act, 1948, this Court held as follows:

4. It is thus now settled by this Court that the term "control" is of a very wide connotation and amplitude and includes a large variety of powers which are incidental or consequential to achieve the powers-vested in the authority concerned....



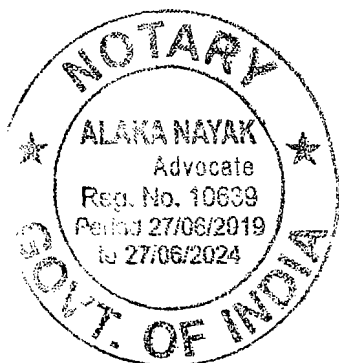
34. We are of the opinion that when we test the meaning of expression "controlled" which figures in between the words "body owned" and "substantially financed", the control by the appropriate government must be a control of a substantial nature. The mere 'supervision' or 'Regulation' as such by a statute or otherwise of a body would not make that body a "public authority" within the meaning of Section 2(h)(d)(i) of the RTI Act. In other words just like a body owned or body

substantially financed by the appropriate government, the control of the body by the appropriate government would also be substantial and not merely supervisory or regulatory. Powers exercised by the Registrar of Cooperative Societies and Ors. under the Cooperative Societies Act are only regulatory or supervisory in nature, which will not amount to dominating or interfering with the management or affairs of the society so as to be controlled. Management and control are statutorily conferred on the Management Committee or the Board of Directors of the Society by the respective Cooperative Societies Act and not on the authorities under the Co-operative Societies Act.

35. We are, therefore, of the view that the word "controlled" used in Section 2(h)(d) (i) of the Act has to be understood in the context in which it has been used vis-À-vis a body owned or substantially financed by the appropriate government, that is the control of the body is of such a degree which amounts to substantial control over the management and affairs of the body.

SUBSTANTIALLY FINANCED

*36. The words "substantially financed" have been used in Sections 2(h)(d)(i) and (ii), while defining the expression public authority as well as in Section 2(a) of the Act, while defining the expression "appropriate Government". A body can be substantially financed, directly or indirectly by funds provided by the appropriate Government. The expression "substantially financed", as such, has not been defined under the Act. "Substantial" means "in a substantial manner so as to be substantial". In *Palser v. Grimling* (1948) 1 All ER 1, 11 (HL), while interpreting the provisions of Section 10(1) of the Rent and Mortgage Interest Restrictions Act, 1923, the House of Lords held that "substantial" is not the same as "not unsubstantial" i.e. just enough to avoid the de minimis principle. The word "substantial" literally means solid, massive etc. Legislature has used the expression "substantially financed" in Sections 2(h)(d)(i) and (ii) indicating that the degree of financing must be*



actual, existing, positive and real to a substantial extent, not moderate, ordinary, tolerable etc.



37. We often use the expressions "questions of law" and "substantial questions of law" and explain that any question of law affecting the right of parties would not by itself be a substantial question of law. In Black's Law Dictionary (6th Edn.), the word 'substantial' is defined as 'of real worth and importance; of considerable value; valuable. Belonging to substance; actually existing; real; not seeming or imaginary; not illusive; solid; true; veritable. Something worthwhile as distinguished from something without value or merely nominal. Synonymous with material.' The word 'substantially' has been defined to mean 'essentially; without material qualification; in the main; in substance; materially.' In the Shorter Oxford English Dictionary (5th Edn.), the word 'substantial' means 'of ample or considerable amount of size; sizeable, fairly large; having solid worth or value, of real significance; sold; weighty; important, worthwhile; of an act, measure etc. having force or effect, effective, thorough.' The word 'substantially' has been defined to mean 'in substance; as a substantial thing or being; essentially, intrinsically.' Therefore, the word 'substantial' is not synonymous with 'dominant' or 'majority'. It is closer to 'material' or 'important' or 'of considerable value.' 'Substantially' is closer to 'essentially'. Both words can signify varying degrees depending on the context.

38. Merely providing subsidiaries, grants, exemptions, privileges etc., as such, cannot be said to be providing funding to a substantial extent, unless the record shows that the funding was so substantial to the body which practically runs by such funding and but for such funding, it would struggle to exist. The State may also float many schemes generally for the betterment and welfare of the cooperative sector like deposit guarantee scheme, scheme of assistance from NABARD etc., but those facilities or assistance cannot be termed as "substantially financed" by the State Government to bring the body within the fold of "public authority" Under

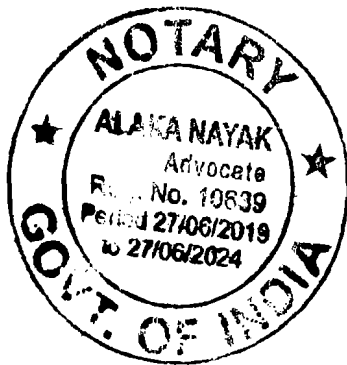
Section 2(h) (d)(i) of the Act. But, there are instances, where private educational institutions getting ninety-five per cent grant-in-aid from the appropriate government, may answer the definition of public authority Under Section 2(h)(d)(i).

.....

.....

BURDEN TO SHOW:

40. The burden to show that a body is owned, controlled or substantially financed or that a non-government organization is substantially financed directly or indirectly by the funds provided by the appropriate Government is on the applicant who seeks information or the appropriate Government and can be examined by the State Public Information Commission or the Central Information Commission, as the case may be, when the question comes up for consideration. A body or NGO is also free to establish that it is not owned, controlled or substantially financed directly or indirectly by the appropriate Government.



41. Powers have been conferred on the Central Information Commissioner or the State Information Commissioner Under Section 18 of the Act to inquire into any complaint received from any person and the reason for the refusal to access to any information requested from a body owned, controlled or substantially financed, or a non-government organization substantially financed directly or indirectly by the funds provided by the appropriate Government. Section 19 of the Act provides for an appeal against the decision of the Central Information Officer or the State Information Officer to such officer who is senior in rank to the Central Information Officer or the State Information Officer, as the case may be, in each public authority. Therefore, there is inbuilt mechanism in the Act itself to examine whether a body is owned, controlled or substantially financed or an NGO is substantially financed, directly or indirectly, by funds provided by the appropriate authority.



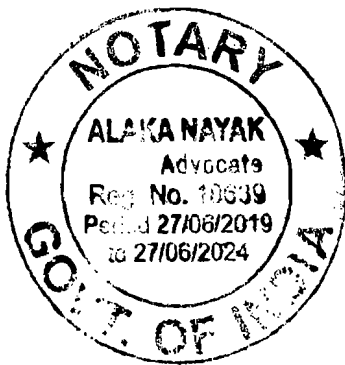
42. *Legislative intention is clear and is discernible from Section 2(h) that intends to include various categories, discussed earlier. It is trite law that the primarily language employed is the determinative factor of the legislative intention and the intention of the legislature must be found in the words used by the legislature itself. In Magor and St. Mellons Rural District Council v. New Port Corporation (1951) 2 All ER 839 (HL) stated that the courts are warned that they are not entitled to usurp the legislative function under the guise of interpretation. This Court in D.A. Venkatachalam and Ors. v. Dy. Transport Commissioner and Ors. MANU/SC/0327/1976 : (1977) 2 SCC 273, Union of India v. Elphinstone Spinning and Weaving Co. Ltd. and Ors. MANU/SC/0019/2001 : (2001) 4 SCC 139, District Mining Officer and Ors. v. Tata Iron and Steel Co. and Anr. MANU/SC/0412/2001 : (2001) 7 SCC 358, PadmaSundara Rao (Dead) and Ors. v. State of Tamil Nadu and Ors. MANU/SC/0182/2002 : (2002) 3 SCC 533, Maulvi Hussain Haji Abraham Umarji v. State of Gujarat and Anr. MANU/SC/0567/2004 : (2004) 6 SCC 672 held that the court must avoid the danger of an apriori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provisions to be interpreted is somehow fitted. It is trite law that words of a statute are clear, plain and unambiguous i.e. they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of the consequences, meaning thereby when the language is clear and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the statute speaks for itself. This Court in Kanai Lal Sur v. ParamnidhiSadhukhan MANU/SC/0097/1957 : AIR 1957 SC 907 held that "if the words used are capable of one construction only then it would not be open to courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."*

43. We are of the view that the High Court has given a complete go-bye to the above-mentioned statutory principles and gone at a tangent by mis-interpreting the meaning and content of Section 2(h) of the RTI Act. Court has given a liberal construction to expression "public authority" Under Section 2(h) of the Act, bearing in mind the "transformation of law" and its "ultimate object" i.e. to achieve "transparency and accountability", which according to the court could alone advance the objective of the Act. Further, the High Court has also opined that RTI Act will certainly help as a protection against the mismanagement of the society by the managing committee and the society's liabilities and that vigilant members of the public body by obtaining information through the RTI Act, will be able to detect and prevent mismanagement in time. In our view, the categories mentioned in Section 2(h) of the Act exhaust themselves, hence, there is no question of adopting a liberal construction to the expression "public authority" to bring in other categories into its fold, which do not satisfy the tests we have laid down. Court cannot, when language is clear and unambiguous, adopt such a construction which, according to the Court, would only advance the objective of the Act. We are also aware of the opening part of the definition clause which states "unless the context otherwise requires". No materials have been made available to show that the cooperative societies, with which we are concerned, in the context of the Act, would fall within the definition of Section 2(h) of the Act."



8. It is further submitted that PM CARES Fund comprises of voluntary donations made by individuals and institutions and is not a part of business or function of the Central Government in any manner.

9. It is further respectfully submitted that PM CARES Fund is not a part of any Government Scheme or business of the Central Government and being a public trust, it is also not subject to audit of Comptroller and Auditor General of India (CAG).
10. In view of the above, it is most respectfully submitted that PM CARES Fund is not a "public authority" under the ambit of Section 2(h) of the RTI Act and therefore the present petition is liable to be dismissed.
11. It is respectfully submitted that the Hon'ble Supreme Court while dealing with PM CARES Fund in Judgment dated 18.08.2020 in Writ Petition (Civil) No.546 OF 2020 - Centre for Public Interest Litigation versus Union of India has been pleased to hold as under: -



".....
 ...

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

69. The contributions made by individuals and institutions in the PM CARES Fund are to be released for public purpose to fulfill the objective of the trust. The PM CARES Fund is a charitable trust registered under the Registration Act, 1908 at New Delhi on 27.03.2020. The trust does not receive any Budgetary support or any Government money. It is not open for the petitioner to question the wisdom of trustees to create PM CARES fund which was constituted with an objective to extend assistance in the wake of public health emergency that is pandemic COVID-19.

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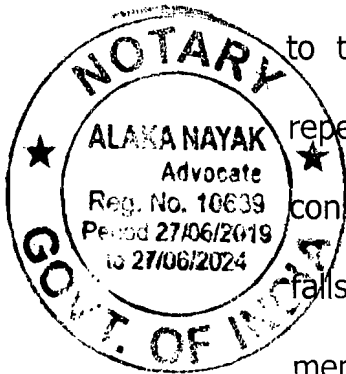


12. The PM CARES Fund consists entirely of voluntary contributions from individuals/organisations and does not get any Budgetary support. It is respectfully submitted that no Government money is credited in the PM CARES Fund. It is further submitted that Only unconditional and voluntary contributions are accepted under PM CARES Fund.

- 13.** It is respectfully submitted that that this Trust is not created by or under the Constitution of India or by any law made by the Parliament or by any State Legislature. It is further respectfully submitted that this Trust is neither intended to be or is in fact owned, controlled or substantially financed by any Government

or any instrumentality of the Government. In other words, there is no control of either the Central Government or any State Government/s, either direct or indirect, in functioning of the Trust in any manner whatsoever.

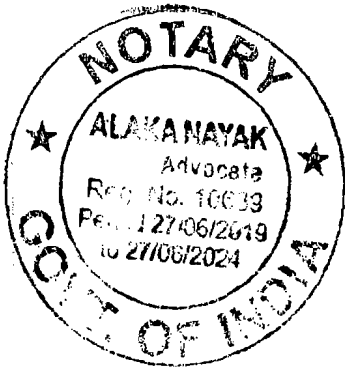
- 14.** It is submitted that when the respondent trust is not a “public authority” within the meaning of section 2[h] of the Act merely because some Government officer provides ex gratia services



to the public trust, can have no relevance at the cost of repetition. It is reiterated that what is required to be considered while examining the question as to whether a body falls within the scope of the Act or not are the ingredients mentioned in section 2[h] and none else. A Government officer providing secretarial assistance on honorary basis while discharging his official duties can never be a relevant consideration for declaring a body to be a public authority when it does not fall within section 24 of the Act.

- 15.** I state and submit that though respondent trust is not a “public authority”, its information has already been uploaded on the website and is available in public domain, the same can be assessed through the same website.

- 16.** I state and submit that so far as the averments with regard to PMNRF is concerned, the same is a subject matter of a separate proceedings. However, the following facts are placed on record with a view to show that there can be no comparison between the PMNRF and the present public trust.
- 17.** As the said issue is pending consideration of this Hon'ble Court [which is different and distinct from the issue involved in the present petition], the deponent is advised not to dwell more elaborately on the said question.
- 18.** It is respectfully submitted that Prime Minister's National Relief Fund (PMNRF) was established in 1948 to assist displaced persons from Pakistan. It is submitted that the resources of the PMNRF are now utilized primarily to render immediate relief to families of those killed and injured in natural calamities like floods, cyclones and earthquakes, etc. and to the victims of the major accidents and riots. It is submitted that assistance from PMNRF is also rendered, to partially defray the expenses for medical treatment like heart surgeries, kidney transplantation, cancer treatment and acid attack etc.

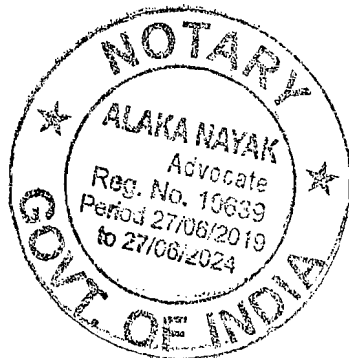


It is submitted that the PMNRF came into existence on the basis of verbal announcement by the then PM. It is

submitted that there was no Trust Deed and fund was not registered either.

- 19.** I respectfully submit that mere grant of certain tax exemptions with regard to the voluntary donations made to a public trust is not a determinative factor for the purpose of section 2[h] of the RTI Act. It is respectfully submitted that there are large number of such public trusts donations to which are exempted. Such exemptions cannot make a public trust a "public authority" within the meaning of section 2[h].
- 20.** I state and submit that as I am filing this affidavit only for the limited purpose as aforesaid. I am not dealing with the petition parawise while denying the truthfulness contained thereof except those which are admitted hereunder.

In view of the submissions made hereinabove, it is respectfully prayed that this Hon'ble Court may be pleased to dismiss the present petition. The answering respondent prays accordingly.



DEPONENT

प्रदीप कुमार श्रीवास्तव
Pradeep Kumar Srivastava
 अवर सचिव / Under Secretary
 प्रधानमंत्री कार्यालय / Prime Minister's Office
 नई दिल्ली / New Delhi

VERIFICATION

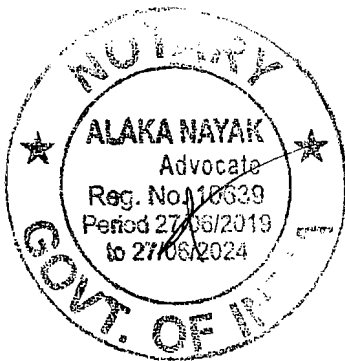
Verified at New Delhi on this 14 SEP 2020 day of September, 2020 that the contents of the above affidavit are true and correct to my knowledge derived from the official records and nothing material has been concealed therefrom.

Pradeep Kumar
Kumar

DEPONENT

प्रदीप कुमार श्रीवास्तव
Pradeep Kumar Srivastava
अवर सचिव / Under Secretary
प्रधानमंत्री कार्यालय / Prime Minister's Office
नई दिल्ली / New Delhi

[Signature]
I identified the deponent who has signed in my presence



[Signature]
14 SEP 2020

[Signature]
S/o, W/o R/o.....
identified by Shri/Smt.....
has solemnly affirmed before me at
this on..... as Ct. No.....
the contents of the affidavit which
has been read & explained to
is true & correct to his knowledge

[Signature]
NOTARY



Kirtiman Singh <kirtimansingh.office@gmail.com>

**ADVANCE SERVICE OF AFFIDAVIT ON BEHALF OF RESPONDENTS IN
W.P. (C) No. 3430 of 2020 - SAMYAK GANGWAL VS CENTRAL PUBLIC
INFORMATION OFFICER, PRIME MINISTER OFFICER & ANR.**

1 message

Kirtimansinghoffice <kirtimansingh.office@gmail.com>
To: ayush@wadhwachambers.com

Mon, Sep 14, 2020 at 11:43 PM

Dear Sir,

Please find attached affidavit on behalf of Respondents in the aforementioned matter.

--

Regards,

Kirtiman Singh

Office:- A-9, Basement
South Extension Part-I
New Delhi – 110049
Phone:-011-49071872

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