VOLUME 1 | ISSUE 2

INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

PM CARES FUND CONTROVERSY: THIS TIME RTI IS AT THE STAKE

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ABSTRACT

The pandemic of COVID-19 is something which was never seen before. The sufferings due to this pandemic are nearlymyriad. The Government of India came with an initiative to somehow subdue at least a part of these sufferings by creating a fund which is known as the PM CARES Fund. The main objective of this fund is to deal with any kind of distress situation posed by the COVID-19 pandemic. On 21st April 2020, an environmental activist, Vikrant Togad filed an application on RTI seeking information about PM CARES Fund from the PMO. But, the PMO refused to provide the information in its reply on 27th April 2020 stating that the PM CARES Fund is not subjected to RTI as it is not a 'Public Authority'.

This article tries to explore this issue and provides some legal analysis of the subject matter. The author is of the opinion that the PM CARES Fund directly falls under the purview of Public Authority defined under Section 2(h) of the RTI Act, 2005 and for this provides numerous arguments favouring the same. So in short, this piece is an initiative to provide a complex view of this issue to the readers.

PM CARES FUND CONTROVERSY: THIS TIME RTI IS AT THE STAKE

April 27, 2020, was the day when the Prime Minister Office(PMO) refused to provide information related to PM CARES fund the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES fund)[2]which was set up with the primary aim of

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2.Staff, S. and Staff, S., 2020. *Modi'S Office Denies RTI Request On PM CARES Fund, Says Will 'Disproportionately Divert Resources'*. [online] Scroll.in. Available at: <https://scroll.in/latest/970602/modis-

reducing the impact of this pandemic on the lives of the people and for this purpose, it accepts financial aid in the form of voluntary donations from the citizens. The main contention of the PMO was that this Fund does not come under the purview of "Public Authority" which is defined under Section 2(h) of the RTI Act, 2005. And once it is provedthat the said Fund does not come under the definition of "Public Authority" then the obligation to disclose the information related to the Fund automatically dies.

This case is simple enough. In case the PM CARES Fund is a "Public Authority", then it is responsible to disclose the necessary information related to it and if it does not come under the ambit of "Public Authority", then it is not responsible to disclose. And for this thing, one must look at Section 2(h) of RTI Act, 2005.

This section deals with the definition of public authority and states that:

"Public authority means any authority or body or institution of self-government established or constituted,—

(a) By or under the Constitution;

(b) By any other law made by Parliament;

(c) By any other law made by State Legislature;

(d) By notification issued or order made by the appropriate Government, and includes any—

(i) Body owned, controlled or substantially financed;

(ii) Non-Government Organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;"

The PM Cares Fund does not fall within the scope of clauses (a), (b), (c) and (ii), because it is neither created by any law of the Parliament nor under the Constitution. Therefore, these categories are eliminated and only 2 categories remain with us {(d) (i)}.

The case of *D.A.V. College Trust & Management Society vs. Director of Public Instructions*[3]becomes important to be noted here. In this case the Supreme Court tries to interpret Section 2(h). The SC held that the intention of the Parliament by adding these two clauses in the definition was to add 2 more categories (i and ii) apart from the earlier

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3.AIR 2019 SC 4411

mentioned 4 categories (a, b, c, d). So the Court basically tried to say that if an authority satisfies one of these 2 conditions (i and ii), but does not satisfy condition (d), then also it will fall under the domain of Public Authority.

Moreover, the case of *National Stock Exchange of India vs. Central Information Commission*[4] also plays an important role in the present matter. In this case, the court held the 3 conditions mentioned under *Section 2(h)(d)(i)* are not at all cumulative in nature, they are distinct from each other and thus if it is proved that a said authority is controlled by the Government of India then it will automatically come under the domain of "Public Authority"

The case of *Thalappalam Service Coop. Bank Ltd. vs. State of Kerala*[5] is noteworthy here in which the SC of India held that a body can be a "public authority" only if it is proved that such body is controlled by the Government of India substantiallyand the mere regulatory or supervisory authority is not enough.

First of all, the SC in this judgment very much elaborated the term 'control' which is somehow defeating the major objective of the RTI Act. In the case of *Bhagat Singh v. CIC*[6], Justice Bhat tried to define the objective of the RTI Act and said:

"A rights-based enactment is akin to a welfare measure, like the Act, should receive a liberal interpretation…Therefore, the meaning of the words has to be construed in their terms. Adopting a different approach would result in narrowing the rights and approving a judicially mandated class of restriction on the rights under the Act, which is unwarranted."

Therefore, the term "public authority should be interpreted by using the technique of liberal interpretation in light of the objectives of the RTI Act.

Moreover, if one agrees with the findings of Thalappalam Service Coop. Bank Ltd. vs. State of Kerala and tries to implement the principle of "substantial control", then also this fund will fall under the definition of public authority.

The chairmanship of the Board of Trustees of this fund is exercised by the Prime Minister of India in its ex-officio capacity, whereas the members of the board include the Minister of Home Affairs, the Minister of Finance and the Minister of Defence. These trustees also have the sole power to make decisions regarding the disbursement of the accumulated donations and

4. 2010 (100) SCL 464 (Del.).
5.2014(1)ALLMR451
6.146 (2008) DLT 385

this thing can be confirmed bythe announcement of May 13 regarding the utilization of INR 3100 Crores.[7]

Moreover, all the expenses incurred on theadvertisements of the PM CARES Fund have been made from the budgetary allocation. Apart from this, the official website of the PM CARES Fund uses the State Emblem of India. *The State Emblem Act, 2005*[8] prohibits the use of the State Emblem unless its use is notified by the Government of India under this Act. The official domain of the website of the fund is Gov.in, this also gives an impression of Public Authority.

These points show the substantial control over the PM CARES Fund by the Government of India.

The only sensible defence left with the PMO after this is that the PM CARES Fund does not come under the ambit of *Article 12 of the Constitution*[9] as it is a public trust and if it does not fall under the definition of 'state', it cannot be a 'public authority'. But, in the cases of *Thalappalam Service Coop. Bank Ltd. v. State of Kerala* and *New Tripura Area Development Corporation Ltd. V. State of Tamil Nadu*,[10] the court expressly said that there is no need for an authority to be a 'State' in order to fall under the purview of Section 2(h).This thing proves that public trust can also fall under the definition of 'public authority'. Hence, this defence cannot be used in the present case.

PMO can also use the defence of fiduciary relationship mentioned under Section 8(1)(e)[11] which lays down the exemptions from discloser of information. But, in the case of Central Board of Secondary Education vs. Aditya Bandopadhyay[12], the Court stated that the withholding information related to the beneficiary from the beneficiary is not at all accepted.

In the present case, PMO is hiding theinformation that is directly related to the citizens of the nationfrom the citizens of the nation, which means it is hiding the information from the

7. Sharma, A., 2020. *Rs 3,100 Crore From PM CARES Allocated To Buy Ventilators, Help Migrants And Develop A Vaccine*. [online] The Economic Times. Available at: https://economictimes.indiatimes.com/news/politics-and-nation/rs-3100-crore-from-pm-cares-allocated-to-buy-ventilators-help-migrants-and-develop-a-vaccine/articleshow/75722737.cms> [Accessed 25 August 2020].
8.Legislative.gov.in. 2020. [online] Available at: <http://legislative.gov.in/sites/default/files/A2005-50.pdf> [Accessed 2 September 2020].
9.Indiankanoon.org. 2020. *Article 12 In The Constitution Of India 1949*. [online] Available at: <https://indiankanoon.org/doc/609139/> [Accessed 3 September 2020].
10. AIR 2010 Mad 176
11.Indiankanoon.org. 2020. *Section 8(1)(E) In The Right To Information Act, 2005*. [online] Available at: <https://indiankanoon.org/doc/1494553/> [Accessed 5 September 2020].
12. (2011) 8 SCC 497

beneficiary only. So, this defence of the fiduciary relationship does not apply in the present case.

Last support left with the PMO is of Section 8(1)(j)[13] which talks about the exemptions from discloser of information on the ground of personal information. But, this defence is also not valid in this scenario because in the famous case of Supreme Court of India vs.Subhash Chandra *Agarwal*[14], the Constitution Bench of SC held 'public interest' to be supreme. The bench held that the CPIO has the power to disclose any private information he deems fit. Furthermore, the disclosure of this information will not attack the privacy of any citizen of the nation. The present matter is directly related to the 'public interest' as the fund was created with the primary objective of public welfare, moreover, it is made up of voluntary donations from the citizens of this nation.Additionally, *Section 11 of the RTI Act*[15]provided an opportunity for an individual to contest any violation of his Right to Privacy by the concerned Third Party.

Apart from this, the notification issued on 28th March 2020 regarding the creation of PM CARES Fund, specifically mentioned that this fund was set up by the Government of India.

In the year 2007, the then CIC of India WajahatHabibullah passed an order on PMNRF in which it was clearly stated that the PMO is obliged to share the information related to the PMNRF with the citizens of the nation because it is held by PMO as a public authority. Going by this logic, the PM CARES Fund also comes under the scope of the RTI Act because it is also controlled by the PMO.

So, the above-made contentions prove that the PM CARES Fund falls under the scope of public authority and thus is subject to RTI. Moreover,the information related to the Fund is for the larger public interest so as to know whether uniform rational criteria are followed. This will also reveal whether any personal biases took place or not while the distribution of the funds. The PM CARES Fund was created for the betterment of the society which is suffering a lot because of this pandemic, it was introduced with the objective of helping the people who became the prey of this deadly coronavirus. So, there arises no question of hiding the

13.Indiankanoon.org. 2020. *Section 8(1)(J) In The Right To Information Act, 2005*. [online] Available at: <https://indiankanoon.org/doc/223928/> [Accessed 5 September 2020].
14.2019 SCC OnLine SC 1459
15. Indiankanoon.org. 2020. *Section 11 In The Right To Information Act, 2005*. [online] Available at: <https://indiankanoon.org/doc/641228/> [Accessed 6 September 2020].

information related to the fund from the society itself. At last, it is hoped that the judiciary will take this matter seriously and will come with some positive remark.