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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 3897/2012

PRIME MINISTER'S NATIONAL RELIEF FUND THROUGH ITS SECRETARY ..... Petitioner

Through: Mr. Sanjay Jain, ASG with Mr. Jasmeet Singh, CGSC, Mr. Noor Anand, Ms. Shreya Srivastava and Ms. Astha Sharma, Advs.

Versus

ASEEM TAKYAR ..... Respondent

Through: Mr. Sanjev Mahajan, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R

% **19.11.2015**

1. The petition impugns the order dated 6th June, 2012 of the Central Information Commission (CIC) constituted under the Right to Information Act, 2005 (RTI Act).

2. Notice of the petition was issued and vide ad-interim order dated 6th July, 2012, which has remained in force, the operation of the impugned order was stayed.

3. Pleadings have been completed. The counsels for the parties have been heard.

4. The impugned order was passed in a second appeal preferred by the respondent to the CIC. The respondent had sought certain information regarding the Prime Minister's Relief Fund (Prime Minister's National Relief Fund) (PMNRF) including the names and particulars of the donors thereto and the beneficiaries thereof during the period from 2009 to 2011. Though the Central Public Information Officer (CPIO) of the PMNRF appointed under the RTI Act provided some information but denied details regarding donors and beneficiaries of the fund stating that the same was exempted from disclosure under Section 8(1)(j) of the RTI Act. The First Appellate Authority of PMNRF also appointed under the RTI Act by and large, endorsed the decision of the CPIO and which brought the matter to the CIC. The relevant part of the impugned order of the CIC is as under:

> *"5. We have given a careful thought to the centre question. It is true that the Prime Minister's Relief Fund does not receive funding from the Central or State Governments. Nevertheless, it is administered in the office of the Prime Minister in accordance with the policy which is already in the public domain. Donations to the fund come from all kinds of sources including, sometimes, State Undertakings, both Central and State. It is often noted that many such donors publicise about their donations in the media. In our view, unless the donor has the desired his donation to be kept confidential and secret, disclosure of the list of donors periodically may be a good idea. At least, the names of institutional donors should surely be*

published. We cannot say the same thing about the recipients and beneficiaries though. Seeking relief from the Prime Minister's Relief Fund is strictly a personal decision and the individual citizens seeking such assistance have a reputation to protect. Making public the names and the amount of money they received from the fund has the potential to compromise their privacy. Therefore, in line with the order already passed by the CIC in the above appeal, we would not think it appropriate to direct the CPIO to disclose the names of the recipients and beneficiaries of this fund.

6. In regard to the donors, as stated above, we are of the view that the details of the institutional donors should be placed in the public domain and disclose to the appellant. We direct the CPIO to do so within 10 working days of receiving this order.

7. The appeal is disposed of accordingly."

5. Though it was the contention of the petitioner on 6th July, 2012, when the petition had come up first, that the order of the CIC was in violation of the provisions of Section 8(1)(j) of the RTI Act and it was only by way of addendum that it was argued that PMNRF cannot be categorised as a public authority, but the counsel for the petitioner has today contended that PMNRF is not a public authority. Attention in this regard is invited to the definition of public authority under Section 2(h) of the RTI Act and it is contended that PMNRF does not fall in any of the categories thereunder. Upon it being enquired, as to what is the constitution of PMNRF, attention is invited to the

additional affidavit dated 28th October, 2014 filed on behalf of the petitioner and the relevant paragraphs whereof are as under:

> *"A. That, Prime Minister's National Relief Fund (PMNRF) owes its origin to an appeal by Prime Minister J.L. Nehru conveyed through Press Note dated 24.01.1948, pursuant to which the general public was invited to make contributions by depositing the same in any branch of Central Bank of India by specifically earmarking the purpose such as "Medical Relief", "Education" "Care of Orphans".*
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> *B. That, at the inception of the PMNRF, a committee comprising of the following persons was named as its "Manager", namely;*
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> *i) The Prime Minister.*
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> *ii) The President of the India National Congress party.*
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> *iii) The Deputy Prime Minister.*
>
> *iv) The Finance Minister.*
>
> *v) A representative of Tata Trustees.*
>
> *vi) A representative of Industry & Commerce to be chosen by FICCI.*
>
> *It is pertinent to state here that the option was kept open to add more members to the managing committee.*
>
> *C. That, in the meantime, on 13th August, 1973, an application was filed before the Income Tax authority u/s 12A of the I.T. Act, 1961 to register the fund as a "Trust" for the purposes of I.T. exemption. Although, no specific Trust Deed was executed for the said purpose, however, the fund was deemed to be a "Trust". The said application of the Fund was allowed by the Commissioner of Income Tax on 18.09.1973 and the fund*

was registered as a "Trust" bearing no. DLI©(T-25)/73-74. Subsequently, the fund has also been allocated a separate Permanent Account Number (PAN).

D. That, sometime in the year 1985, the then Managing Committee of the Fund entrusted the entire management of the said fund to Hon'ble the Prime Minister. The PM was conferred with sole discretion to appoint a "Secretary of the fund" on his behalf, upon whom amongst other things, the authority to operate the bank accounts of the fund was also delegated.

E. That, even since the time of restructuring of management of the fund, the said Fund is being managed in the same manner. It is submitted that there is no separate office of the PMNRF nor any separate staff has been allocated for management of the said fund.

F. That it is further submitted that Hon'ble Prime Minister delegates his powers to operate the fund upon one of the officers of PMO for smooth management of the fund. Such officer takes secretarial assistance from the Funds Division of the PMO. The staff of the Funds Division (which is established to manage other funds of the PMO) provides secretarial services to the delegate of the Hon'ble Prime Minister. It is significant to note that all concerned in the management of the PMNRF including those providing secretarial assistance work on honorary basis while discharging their primary/ordinary assigned duties.

G. That, in order to amplify the scope of work of the Funds Division, it may be pointed out that the said Funds division was established to deal with other funds of the PMO which include the National Defence Fund (NDF) set up by a Cabinet decision after the Indo-China war and the Prime Minister's Discretionary Fund (which receives annual grants from the Consolidated Fund of India). Therefore, it necessarily follows that no specific expenditure is incurred for managing the PMNRF."

6. I have at the outset enquired from the counsel for the petitioner that if according to the petitioner PMNRF is not a public authority, why its CPIO and First Appellate Authority have been appointed.

7. The counsel for the petitioner states that the CPIO and the First Appellate Authority which dealt with the application of the respondent seeking information were in fact the CPIO and First Appellate Authority of Prime Minister's Office and not of PMNRF.

8. Section 2(h)(d) of the RTI Act includes in the definition of public authority, any authority or body or institution of self-government established or constituted by notification issued or order made by the appropriate government. It has as such been enquired from the counsel for the petitioner, whether not the directions of the Prime Minister inviting contributions, setting up a Committee, registration of the fund as a Trust for the purposes of income tax exemption, obtaining of Permanent Account Number (PAN) of the said fund and entrusting the management of the fund, as has disclosed in the additional affidavit aforesaid and as set out hereinabove, qualify as an order.

9. The counsel for the petitioner has argued that there is no 'notification' within the meaning of Section 2(h)(d) of the Act.

10. However, Section 2(h)(d) would include any authority or body or institution of self-government established or constituted also by an order made by the appropriate government. In my view, all the aforesaid actions of the Prime Minister cannot be deemed to be or be considered as actions in his personal capacity but have necessarily to be actions of the Government which the Prime Minster represents and the purpose and functions of the fund are functions of self-government.

11. It does not stand to logic that the PMNRF has been established otherwise than by an order of the appropriate government.

12. The counsel for the petitioner in this regard has handed over a copy of the Press Note dated 24th January, 1948 released from the Prime Minister's Secretariat in the form of an appeal. The same also, in my opinion, has all the trappings of an order of the Prime Minister.

13. I have further enquired from the counsel for the petitioner, whether not donations to the PMNRF qualify for income tax deduction. To my knowledge, they do. The counsel for the petitioner states that he has no

instructions in this regard.

14. There is another aspect of the matter.

15. This Court, in exercise of jurisdiction under Article 226 of the Constitution of India is empowered to even where finds legal flaw in an order impugned before it, refuse the relief, if finds grant of relief not conducive in public interest. I find the order of the CIC impugned in this petition to be well balanced. The CIC has well protected the interest of all concerned. Else, there does not seem to be any justification for the petitioner to impugn the said order.

16. However since certain other petitions are pending before this Court with respect to similar offices and any conclusive decision qua the PMNRF may affect the decision therein, I deem it appropriate to clarify that though of the opinion aforesaid, I in this case chose to dismiss this petition on the aforesaid reasoning, without rendering any conclusive finding on the aspect of PMNRF being a public authority. The CIC has only directed disclosure of the names of the institutions and not individual donors and not of the recipients and has rightly reasoned that when a donor is availing income tax exemption for such donation, there should be no element of secrecy /

confidentiality therein, unless the donors makes the donation thereto.

17. The counsel for the petitioner has relied on ***Thalappalam Service Cooperative Bank Limited Vs. State of Kerala*** (2013) 16 SCC 82 but which is concerning a Non-Governmental Organisation (NGO). Certainly, PMNRF cannot be equated to be an NGO and is admittedly not an NGO.

18. With the aforesaid observations, the petition is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 19, 2015
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(corrected & released on 24th December, 2015)