



## RTI VS. THE PM CARES FUND

By R. Preethi Rani

From Government Law College, Tirunelveli

### Introduction

Good Governance is where the Government works for the welfare of the people. India being a huge democracy, it requires participation from every front to implement the objective of good governance. A good piece of welfare legislation is one that should not just serve the elites but everyone in the country. In that line, the Right to Information Act has played a significant role in enhancing people's participation in the democratic process and thereby making the government and the bureaucrats more accountable to people. Freedom of speech and press lay the foundation of all democratic organisations, for without free political discussion, no public education so essential for the proper functioning of the process of popular government is possible.<sup>1</sup> In that similar context, it was expected that the money received by the PM CARES Fund would be revealed but to the contrary PMO (Prime Minister's Office) has refused to disclose. This was considered a severe backlash by the RTI activists and by everyone who had contributed to the fund. This article analyses why the PM CARES Fund was not covered under the RTI Act and why it should have been covered.

### Right to Information

The Constitution of India is an organic document that is constantly evolving. Article 19 (1) (a) enumerates the Right to Freedom of Speech and Expression. The RTI

Act was enacted to give effect to this provision. The first country in the world to enact a law for the freedom of information to people is Sweden in the year 1766. The USA enacted a law for freedom of information in the year 1966. India in the year 2002 by name Freedom of Information Act, 2002. However, it wasn't satisfactory. It has several lacunas and did not serve the purpose it was meant for. So, the Parliament came up with another legislation, the Right to Information Act, 2005. Freedom of information does not impose any liability on anybody, but the Right to information does. As the legal maxim goes, 'Ubi jus ibi remedium'<sup>2</sup>. If someone has a legal right, it imposes a legal duty upon others not to infringe that right and if they do, the law imposes penalties to them. These words are put into action in the RTI Act. It sets a limitation period for the Information providing Officer, within that period he/she should respond to the queries requested by citizens under this Act and if they don't, they will be subjected to penalties. They should either give the claimant what information they asked for (or) provide reasons for why the application cannot be entertained. It is only this new (2005) legislation that reached every knock and corner of the country. Every single person became empowered through this act. Many new information starting from the criminal antecedents of the candidates contesting in elections to how many countries the Prime Minister has visited and the expenditure for the same etc. was made known to the public. Numerous information came to the knowledge of the people in the country. It has uncovered innumerable scandals. Furthermore, several decisions of the Supreme Court in favour of the people also

<sup>1</sup> Justice Patanjali Sastri in Romesh Thapper vs. State of Madras (AIR 1950 SC 124).

<sup>2</sup> Where there is a Right, there is a remedy.



added strength to this law. In the Union of India vs. Association for Democratic Reforms<sup>3</sup>, the SC delivered a judgment directing the Election Commission to issue a notification making it compulsory for those who contest in elections to make available information about their education, assets, liabilities, and criminal antecedents for the benefit of voters. Because only if the citizens knew this information, they would be an active participant in the polling process thereby choosing the right person to rule them and the country. Thus, in short, the new legislation turned out to be a massive success in terms of its reach, usage, and popularity it achieved compared to the 2002 Act. Just how Article 19 applies only to citizens, only citizens can claim information under the RTI Act.

### **PM cares fund**

The Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) was created on the 28<sup>th</sup> March 2020 during the COVID-19 pandemic in India. The fund was proposed to be used for combating in containment and relief efforts against the coronavirus outbreak and similar pandemic like situations in the future. The documentation of the constitution of the fund was not shown to the public. The public was only notified<sup>4</sup> of such a constitution on the 28<sup>th</sup> of March. The Government of India has stated that the following are the trustees to the fund. The Prime Minister of India, Narendra Modi is the ex-officio chairman of the fund. The trustees include the Minister of Defence, Rajnath Singh; Minister of Home Affairs,

Amith Shah; Minister of Finance, Nirmala Sitharaman. PM CARES Fund is entirely cashed by the money received from the public. The Central and the State governments do not make any contributions to it. The PM CARES Fund received donations from both governmental and non-governmental organisations, individuals, corporates, etc. Any money contributed to this fund is also given full exemption from taxes by making appropriate amendments to the Income Tax Act, 1961.<sup>5</sup>

All this being said, the PM CARES Fund, however, received many criticisms for the lack of transparency and accountability. Because the constitution and working of the fund were not disclosed to the public. Only a notification<sup>6</sup>, regarding such a constitution, was shown to the public on the 28<sup>th</sup> of March 2020. The public has been put in dark from knowing any details of its functioning. We also do not know how the fund is audited and how the accounts are maintained. The government also did not answer, why they would not just use PMNRF – Prime Minister National Relief Fund. PMNRF was established by the first Prime Minister of India, Jawaharlal Nehru. Money to this fund is contributed by the public and not by the government. It was originally established to help people displaced by the partition of India, however now it provides support for people affected by natural and man-made disasters also. Natural disasters like floods, earthquakes, cyclones, etc. and man-made disasters like acid attacks, riots, major accidents, etc., are covered under this fund. PMNRF also supports people for treatments

<sup>3</sup> AIR 2002 SC 2112

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[http://www.mca.gov.in/Ministry/pdf/Circular\\_29032020.pdf](http://www.mca.gov.in/Ministry/pdf/Circular_29032020.pdf)

<sup>5</sup> Dated 1<sup>st</sup> day of April 2020

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[http://www.mca.gov.in/Ministry/pdf/Circular\\_29032020.pdf](http://www.mca.gov.in/Ministry/pdf/Circular_29032020.pdf)



like cancer, kidney transplantation, heart surgery, etc. Even though PMNRF also serves a similar purpose to that of PM CARES FUND, the government however decided to establish a new one. Reason for which, only the government knows.

### Analysis

Adding to the controversy of lack of transparency of the PM CARES Fund, an RTI query was made, asking how much money the PM CARES Fund has received. But the Prime Minister's Office has refused to answer. The reason given was that the PM CARES Fund was only a Public Charitable Trust and not a 'Public Authority' under the RTI Act. It was also stated that relevant information concerning the PM CARES Fund may be seen on the official website i.e., pmcares.gov.in. It was on this ground information requested under RTI was rejected by the PMO. But the website too does not provide any details about how much money the fund has received. Since the fund is entirely cashed out of money donated by the common people it was held, not to be a public authority but only a public trust. However, it is pertinent to note here that not only the general public but several public sector units have also contributed to this fund.

Now, let's analyse why the PM CARES Fund should be brought under the RTI Act.

- (1.) Sec 2 (h) of the RTI Act, defines 'Public Authority' as  
'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.

It could be seen that although PM CARES Fund may not seem to be an authority or a body or an institution, it does in fact was established by a "notification issued by the Government of India"<sup>7</sup>.

- (2.) In Secretary-General, Supreme Court of India vs. Subash Chandra Agarwal<sup>8</sup> – a case decided by a Constitutional Bench<sup>9</sup> on the 13<sup>th</sup> November 2019, held that Supreme Court is a "Public Authority", therefore the Chief Justice Office (CJO) is part and parcel of the institution. The Bench upheld the '2009 decision of Delhi High Court'<sup>10</sup>. Supreme Court reiterated that Sec 2 (h) of the RTI Act includes any authority or body established or constituted by or under the Constitution of India. The Supreme Court of India was constituted by Article 124 of the Indian Constitution. Therefore, it is a Public Authority within the meaning of this act and hence the CJI office too.

Similarly, Article 74 says that "There shall be a Council of Ministers with the Prime Minister at the head....", which establishes the authority of the Prime

<sup>7</sup> Ibid.

<sup>8</sup> CIVIL APPEAL NO. 10044 OF 2010

<sup>9</sup> CJI, Ranjan Gogoi, J. N.V. Ramana, J. Dr. Chandrachud, J. Deepak Gupta, J. Sanjiv Khanna

<sup>10</sup> LPA No. 501/2009



Minister of India. So, in similar lines, the Prime Minister's Office (PMO) too should be a Public Authority. If it was a public authority, then any information held by PMO in the public nature must be covered under the RTI Act. So, the fund must also be covered by this Act.

- (3.) In Reserve Bank of India and others vs. Jayanthilal N. Mistry and others<sup>11</sup>, SC held that Information under section 2 (f) of the RTI Act means "any material in any form, including records, documents, memos, e-mails, opinions, advice, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force. The Legislature intends to make available to the general public such information which had been obtained by the public authorities from the private body." The SC thus held that all information held by Public Authorities is owned by citizens who are sovereign. Hence, the PMO being a public authority holding all the details concerning the PM CARES Fund must be revealed to the public. And very importantly the fund itself is a complete contribution of the public. Also, it could be understood that even the information relating to a private body was brought within the ambit of the RTI Act, then why not the PM CARES Fund?

It was furthermore held in the same case<sup>12</sup> that "The people of this country have a right to know every public act, everything that is done in a public way, by their functionaries. The right to know, which is derived from the concept of

freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security." The PM CARES Fund is entirely contributed by the common people of the country, so they have all the right to know everything about the fund. Whatever details the public claims relating to that fund under RTI must be revealed to the public. It is not only the right of the people but also the duty of the government. Moreover, revealing the fund details will have no repercussion on public security.

- (4.) PMO answered how the money received by the fund was allocated for various purposes. It showed how Rs. 3,100 Crore has been allocated for different purposes.

- a. Rs. 2,000 Crore for the supply of 50,000 'Made-in-India' ventilators to Government Hospitals run by Centre/State/UTs.
- b. Rs. 1,000 Crore for the care of migrant labourers (funds allotted to State/UT Govts).
- c. Rs. 100 Crore for vaccine development.

If the PMO can give this statement, then why can't the total amount received by the Fund.

### **Conclusion and Suggestion**

It is important that in order to gain the confidence of the people, the government has to be more transparent with them. That is where the essence of socialistic democracy lies. The RTI Act is the most celebrated and widely used. It has empowered citizens by deepening the roots of democracy. Citizens who were once only mere spectators have now become vigilant monitors of the acts of the government and the persons elected by them to rule the country. They have

<sup>11</sup> A.I.R 1982 SC149

<sup>12</sup> Reserve Bank of India and others vs. Jayanthilal N. Mistry and others



uncovered many scams and exposed corruption. Corruption and Indian Politicians have become like the two sides of the same coin. In order to break this stereotypical thought and gain the confidence of the people, the government has to constantly work for the betterment of people and whenever and wherever possible be more transparent with them. RTI Act is a way to preserve the concept of democracy, not to show that the government has the power to act arbitrarily whenever they want. The government must understand that even a homeless person on the street pays taxes to the government while he buys something from a shop. And this fund is something entirely contributed by the common people and the people now want to know how much money the fund has accumulated. It's not so much to ask. So, by any possibility, the people are within their limits to ask for it. Instead of providing reasons for denying the request of people, the government should realize that they owe this to the public and they just can't escape from their obligation.

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