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REEPAK KANSAL

v.

UNION OF INDIA AND OTHERS

(Writ Petition (Civil) No. 554 of 2021)

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June 30, 2021

[ASHOK BHUSHAN AND M. R. SHAH, JJ.]

- Covid-19 Pandemic: Disaster Management Act, 2005 – ss.12, 2(d), 2(e), 2(i), 2(m), 6, 10, 19, 46 and 48 – Prayer for directions to*
- C *National Disaster Management Authority (NDMA)/Central Government/State Governments to provide ex gratia monetary compensation to the families of the deceased persons who succumbed to the pandemic of Covid-19, in view of s.12 of the Act – Whether the word “shall” used in s.12 of the Act is to be interpreted and considered as “shall” or “may” and whether it is “mandatory”*
- D *or “directory/discretionary” for the National Disaster Management Authority to recommend guidelines for the minimum standards of relief to be provided to persons affected by disasters including ex gratia assistance on account of loss of life – Held: To construe the word “shall” as “may” and as directory/ discretionary, the very object and purpose of the Act will be defeated – The word “shall” used twice in s.12 significantly imposes a duty cast upon the National Disaster Management Authority to issue guidelines for the minimum standards of relief which shall include ex gratia assistance on account of loss of life as also assistance on account of damage to houses and for restoration of means of livelihood – Provisions of*
- E *s.12 has to be applied to Covid-19 pandemic which is declared as “notified disaster”/national disaster – National Disaster Management Authority failed to perform its statutory duty cast u/ s.12 and therefore a writ of mandamus is to be issued – National Disaster Management Authority directed to recommend guidelines for ex gratia assistance on account of loss of life to the family members of the persons who died due to Covid-19, as mandated u/ s.12(iii) of DMA 2005 for the minimum standards of relief to be provided to the persons affected by disaster-Covid 19 Pandemic, over and above the guidelines already recommended for the minimum standards of relief to be provided to persons affected by Covid-19*
- H *– However, what reasonable amount to be offered towards ex gratia*

assistance is left to the wisdom of National Disaster Management Authority. A

Covid-19 Pandemic: Disaster Management Act, 2005 – ss. 12, 2(d), 2(e), 2(i), 2(m), 6, 10, 19, 46 and 48 – Prayer for directions to National Disaster Management Authority (NDMA)/Central Government/State Governments to provide ex gratia monetary compensation to the families of the deceased persons who succumbed to the pandemic of Covid-19 – Whether a writ of mandamus can be issued directing the Central Government/National Authority/State Governments to pay a particular amount by way of ex gratia assistance, more particularly Rs. 4 lacs, as prayed by the petitioners – Whether the Court can/may direct to pay a particular amount by way of ex gratia assistance – Held: The Government should be free to take policy decisions/decide priorities (of course to achieve the ultimate goal of DMA 2005, government should be free to take its own decisions/priorities while providing minimum standards of relief and even towards preparedness, mitigation, prevention and recovery), subject to the availability of the resources/funds and the amount to be spent towards other reliefs on the aid and advice of the experts and looking to the circumstances from time to time – Therefore, no relief can be granted to direct the National Authority/Central Government/State Governments to pay a particular amount towards ex gratia assistance on account of loss of life to the family members of the persons who have died due to Covid-19 – Some States are paying ex gratia assistance to the family members of the persons who have died due to Covid-19 pandemic – However, the same is paid from the Chief Minister Relief Fund or other relief funds, but not from State Disaster Response Fund (SDRF) – To avoid any heart-burning and discriminatory treatment, it would be appropriate for the National Authority to recommend uniform guidelines while providing for the minimum standards of relief in the form of ex gratia assistance on account of loss of life, as mandated under s.12 of the Act – However, at the same time, it will always be open for the concerned States to provide for ex gratia assistance on account of loss of life and other reliefs from their own relief funds (other than SDRF) as it would be a policy decision by the concerned States and they may provide such other relief/reliefs, looking to the availability of the fund – However, merely because some States might have been paying the ex gratia assistance on H G

- A *account of loss of life to the family members of the persons who have died due to Covid-19 pandemic, no writ of mandamus can be issued directing the Central Government/State Governments to pay a particular sum/amount by way of ex gratia assistance as the utilization of the fund/money by the Central Government would depend upon the priorities fixed by them which includes the money/fund to be used for prevention, preparedness, mitigation, recovery etc. – Therefore, what amount to be paid by way of ex gratia assistance to the family members of the persons who died due to Covid-19 pandemic should be left to the National Authority/Central Government.*
- C *Covid-19 Pandemic: Disaster Management Act, 2005 – ss. 2(d), 2(e), 2(i), 2(m), 6, 10, 12, 19, 46 and 48 – Prayer for directions to the respondents/State Governments to fulfill their obligation(s) to take care of victims of the calamity and their family members – Held: The prayer is too vague – Even otherwise, considering the counter affidavit filed on behalf of the Union of India it demonstrates the various reliefs declared by the Union Government – As such, no mandamus can be issued directing the respondents – State Governments to declare a particular policy / relief/relief package in general and the same shall be within the domain of policy decision and would have financial implications also.*
- F *Covid-19 Pandemic: Disaster Management Act, 2005 – ss. 2(d), 2(e), 2(i), 2(m), 6, 10, 12, 19, 46 and 48 – Prayer for directions to respondents-State Governments to issue any official document stating cause of death, to the family members of the deceased who died due to Covid-19 – Held: It is the duty of the every authority to issue accurate/correct death certificates stating the correct and accurate cause of death, so that the family members of the deceased who died due to Covid-19 may not face any difficulty in getting the benefits of the schemes that may be declared by the*
- G *Government for the death of the deceased, who died due to Covid-19 – In the death certificate also, if a person has died due to Covid-19 and/or any other complications/disease due to Covid-19, it should be specifically mentioned in the death certificate – The procedure should be as simplified as it can be – Appropriate Authority directed to issue simplified guidelines for issuance of Death Certificates/ official document stating the exact cause of death, i.e., “Death due*
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to Covid-19”, to the family members of the deceased who died due to Covid-19 – Such guidelines may also provide the remedy to the family members of the deceased who died due to Covid-19 for correction of the death certificate/official document issued by the appropriate authority, if they are not satisfied with the cause of death mentioned in the death certificate/official document issued by the appropriate authority.

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Covid-19 Pandemic: Disaster Management Act, 2005 – ss. 2(d), 2(e), 2(i), 2(m), 6, 10, 12, 19, 46 and 48 – Prayer for directions to the respondents-Union of India and others to provide social security and rehabilitation to the victims of Covid-19 – Held: From the XVth Finance Commission Report, it appears that the Finance Commission in its report has already made recommendations of the same and from the counter affidavit it appears that the Union Government has been actively considering the same in consultation with other stakeholders – Even otherwise, from the counter affidavit filed on behalf of the Union of India, it appears that the Central Government has already launched the Pradhan Mantri Garib Kalyan Package under which a comprehensive personal accident cover of Rs. 50 lakhs have been provided to 22.12 lakh health care providers throughout the country, including community health workers and private health workers who may have been in direct contact and care of Covid-19 patients and may be at risk of being impacted/infected by this – It is further reported that on account of unprecedented situation, private hospital staff/retired/volunteer/local urban bodies/contract/daily wage/ad-hoc/outsourced staff requisitioned by States/Central Hospitals/ autonomous hospitals of Central /States/Union Territories, AIIMS & Institute of National Importance (INI)/hospitals of Central Ministries specifically drafted for care of Covid-19 patients are also covered under the scheme – The benefits under the said scheme have been extended for a further period of 180 days with effect from 24.04.2021 – Therefore, it appears that sufficient care has been taken – However, some class might have been left out, like those persons working at pre-mortem – Thus, the Union Government may look into the same and cover them also who might have been left out and who can be said to be in direct contact of dead bodies of Covid-19 patients – The Union of India to take appropriate steps on the recommendations made by the Finance Commission in its XVth Finance Commission Report

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- A bearing in mind paragraph 8.131 in consultation with other stakeholders and experts.

Disaster Management Act, 2005: Enactment of – Object and purpose – Discussed.

- B *Administrative Law: Policy decision – Interference with – Scope – Held: When the Government forms its policy, it is based on a number of circumstances, on facts, law including constraint based governmental resources – The Government is entitled to make pragmatic adjustments which may be called for by particular circumstances – The function of the Court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority – Therefore, the Courts would be very slow to interfere with priorities fixed by the government in providing reliefs, unless it is patently arbitrary and/or not in the larger public interest at all – Judicial Review.*
- C *Judicial Review: Scope of – Writ of Mandamus – When can be issued – Held: If the statutory authority/authority fails to perform its statutory duty cast under the statute or constitutional duty, a mandamus can be issued directing the authority to perform its duty cast under the statute – In such a situation, the Court would be absolutely justified in issuing a writ of mandamus directing the authority to perform its statutory duty/constitutional duty.*

Interpretation of Statutes: Plain meaning – Held: When the language of the provision is plain and unambiguous, statutory enactments must ordinarily be construed according to its plain meaning.

- F *Interpretation of Statutes: Beneficial provision – Held: The beneficial provision of the legislation must be literally construed so as to fulfill the statutory purpose and not to frustrate it.*

- G **Disposing of the writ petitions and also all pending interlocutory applications, the Court**

HELD:1.1. In Section 12 of Disaster Management Act, 2005, the word “shall” is used twice. The intent of the legislature by using the word “shall” twice is very clear and the same can be in tune with the Statement of Objects and Reasons for enactment

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of DMA 2005 and the functions and powers of the National Authority. One of the Objects and Purposes is “mitigation”. As per Section 6(1) and Sub-section 2(g) of Section 6, the National Authority shall have the responsibility for laying down the policies, plans and guidelines for disaster management and recommend provision of funds for the purpose of mitigation. Section 12 specifically provides that the National Authority “shall” recommend guidelines for the minimum standards of relief to be provided to persons affected by disaster, which “shall” include, (i) the minimum requirements to be provided in the relief camps in relation to shelter, food, drinking water, medical cover and sanitation; (ii) the special provisions to be made for widows and orphans; and (iii) ex gratia assistance on account of loss of life as also assistance on account of damage to houses and for restoration of means of livelihood. Therefore, it is the statutory duty cast upon the National Authority to recommend guidelines for the minimum standards of relief to be provided to persons affected by disaster, which shall include the reliefs, as stated hereinabove. The language used in the provision is very plain and unambiguous. As per the settled proposition of law laid down by this Court in a catena of decisions, when the language of the provision is plain and unambiguous, statutory enactments must ordinarily be construed according to its plain meaning. The beneficial provision of the legislation must be literally construed so as to fulfil the statutory purpose and not to frustrate it. [Para 10.1][968-C-G]

1.2. Under Section 12 of Disaster Management Act, 2005, the National Authority is mandated to recommend guidelines for the minimum standards of relief. Minimum standards of relief are, as such, not defined under the Act. Then what is somewhat intended by the legislature while providing minimum standards of relief is to be gathered from Section 12 itself. Ex gratia assistance on account of loss of life as also assistance on account of damage to houses and for restoration of means of livelihood therefore can be said to be part of minimum standards of relief of which the National Authority is required to recommend guidelines. [Para 10.2][968-H; 969-A-B]

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- A 1.3. Even to interpret the legal import of the word “may”, the Court has to consider various factors, namely, the object and the scheme of the Act, the context and the background against which the words have been used, the purpose and the advantages sought to be achieved by the use of this word, and the like. [Para 10.3][969-B-C]
- B 1.4. To construe the word “shall” as “may” and as directory/discretionary, the very object and purpose of the Act will be defeated. The word “shall” used twice in Section 12 significantly imposes a duty cast upon the National Authority to issue guidelines for the minimum standards of relief which shall include ex gratia assistance on account of loss of life as also assistance on account of damage to houses and for restoration of means of livelihood. Nothing is on record that any guidelines/decision has been taken by the National Authority recommending guidelines for the minimum standards of relief in the form of ex gratia
- C assistance on account of loss of life of a person who has died due to Covid-19. At this stage, it is required to be noted and it is not in dispute and cannot be disputed that Covid-19 pandemic is a disaster within the meaning of Section 2(d) of DMA 2005. Not only that even in the letter dated 14.03.2020, the Central Government has declared Covid-19 pandemic as “notified disaster”. Even, all other steps including the guidelines and SOPs are issued under the provisions of DMA 2005. Therefore, once the Covid-19 pandemic is declared as “notified disaster”/national disaster, even otherwise the same can be disaster within the meaning of Section 2 (d) of DMA 2005, the provisions of Section
- F 12 of DMA 2005 shall be applicable and it has to be applied to the Covid-19 pandemic which is declared as “notified disaster”/national disaster. The submission on behalf of the Union of India that considering the peculiar nature of the Covid-19 pandemic, even if Covid-19 pandemic is declared and/or considered as a disaster, Section 12 of DMA 2005 may not be applicable and/or the word “shall” should be construed as “may” as when DMA 2005 was enacted, the legislature might not have visualised that such a pandemic/disaster would occur which would have a long-time effect/impact. The aforesaid cannot be accepted for the simple reason that every disaster as defined under Section 2(d) of the
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Act is a disaster and once it is declared as a “notified disaster”/ national disaster/disaster, Section 12 of DMA 2005 shall be applicable and is mandatorily to be complied with, with respect to any disaster, within the meaning of Section 2(d) of DMA 2005. [Para 10.4][969-H; 970-A-F] A

1.5. Nothing is on record that any decision/guidelines has/ have been issued by the National Authority for ex gratia assistance on account of loss of life due to Covid-19 pandemic while recommending guidelines for minimum standards of relief to be provided to the persons affected by the disaster/Covid-19 pandemic. Once, it is observed as above and it is held that the word “shall” have to be read as “shall” and it is the mandatory statutory duty cast upon the National Authority to recommend guidelines for the minimum standards of relief which shall include ex gratia assistance on account of loss of life, not recommending any Guidelines for ex gratia assistance on account of loss of life due to Covid-19 pandemic, while recommending other guidelines for the minimum standards of relief, it can be said that the National Authority has failed to perform its statutory duty cast under Section 12 and therefore a writ of mandamus is to be issued to the National Authority to recommend appropriate guidelines for ex gratia assistance on account of loss of life due to Covid-19 pandemic while recommending guidelines for the minimum standards of relief to be provided to persons affected by disaster/Covid-19 pandemic as mandatory under Section 12 of DMA 2005. [Para 10.4][970-G-H; 971-A-B] B C D E F G H

2.1. It cannot be disputed that Covid-19 pandemic is a peculiar disaster, which the country and the world has experienced in a long time. It has an extraordinary spread and impact from that of other natural disaster/disasters. Therefore, its extreme spread and impact requires an approach different from the one that is applied to other disasters/natural disasters. There shall not be any justification to provide for the same/similar amount by way of ex gratia assistance as provided in the case of other disasters/natural disaster, i.e., Rs. 4 lacs. [Para 11.1][971-D-E; 972-B-C] F G

2.2. The Government however has to decide its own priorities and reliefs to the different sectors/for different reliefs. H

- A The Government is also required to deal with the effect of the pandemic on the economy. A huge amount is required to be spent from the National Disaster Response Fund (NDRF) / State Disaster Response Fund (SDRF), even while providing minimum standards of relief. It cannot be disputed that ex gratia assistance would also have financial implications and which may affect the other minimum standards of relief to be provided to the persons affected by disaster. No State or country has unlimited resources. That is why it only announces the financial reliefs/packages to the extent it is possible. When the Government forms its policy, it is based on a number of circumstances, on facts, law including constraint based governmental resources. The Government is entitled to make pragmatic adjustments which may be called for by particular circumstances. The function of the Court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. Therefore, the Courts would be very slow to interfere with priorities fixed by the government in providing reliefs, unless it is patently arbitrary and/or not in the larger public interest at all. The Government should be free to take policy decisions/decide priorities (of course to achieve the ultimate goal of DMA 2005, government should be free to take its own decisions/priorities while providing minimum standards of relief and even towards preparedness, mitigation, prevention and recovery), subject to the availability of the resources/funds and the amount to be spent towards other reliefs on the aid and advice of the experts and looking to the circumstances from time to time. Therefore, no relief can be granted to direct the National Authority/Central Government/ State Governments to pay a particular amount towards ex gratia assistance on account of loss of life to the family members of the persons who have died due to Covid-19. It should be left to the wisdom of National Authority while considering the guidelines / recommendations of the Finance Commission in its XVth Finance Commission Report and the funds required for other reliefs/ priorities. The recommendations of the Finance commission provide sufficient guidelines. However, at the same time, while recommending guidelines for the minimum standards of relief to be provided to persons affected by disaster/Covid-19 pandemic,
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the authority has to consider issuing/recommend guidelines on ex gratia assistance on account of loss of life. Ex-gratia assistance on account of loss of life is part of minimum standards of relief, which must be considered by the National Authority while providing for the minimum standards of relief to be provided to the persons affected by disaster – in the present case Covid-19 pandemic. [Para 12][972-C-H; 973-A-D]

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2.3. It is reported that some States are paying ex gratia assistance to the family members of the persons who have died due to Covid-19 pandemic, like State of Bihar paying Rs. 4 lacs, Karnataka paying Rs. 1 lac and Delhi paying Rs. 50,000/-. However, it is to be noted that the same is paid from the Chief Minister Relief Fund or other relief funds, but not from SDRF. To avoid any heart-burning and discriminatory treatment, it would be appropriate for the National Authority to recommend uniform guidelines while providing for the minimum standards of relief in the form of ex gratia assistance on account of loss of life, as mandated under Section 12 of the Act. However, at the same time, it will always be open for the concerned States to provide for ex gratia assistance on account of loss of life and other reliefs from their own relief funds (other than SDRF) as it would be a policy decision by the concerned States and they may provide such other relief/reliefs, looking to the availability of the fund. However, merely because some States might have been paying the ex gratia assistance on account of loss of life to the family members of the persons who have died due to Covid-19 pandemic, no writ of mandamus can be issued directing the Central Government/State Governments to pay a particular sum/amount by way of ex gratia assistance as the utilization of the fund/money by the Central Government would depend upon the priorities fixed by them which includes the money/fund to be used for prevention, preparedness, mitigation, recovery etc. Therefore, what amount to be paid by way of ex gratia assistance to the family members of the persons who died due to Covid-19 pandemic should be left to the National Authority/Central Government. [Para 12.1][973-E-H; 974-A-B]

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3. It is the duty of the every authority to issue accurate/correct death certificates stating the correct and accurate cause

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- A of death, so that the family members of the deceased who died due to Covid-19 may not face any difficulty in getting the benefits of the schemes that may be declared by the Government for the death of the deceased, who died due to Covid-19. In the death certificate also, if a person has died due to Covid-19 and/or any other complications/disease due to Covid-19, it should be specifically mentioned in the death certificate. The procedure should be as simplified as it can be. A simplified procedure/guidelines is/are required to be issued by the Central Government and/or appropriate authority for issuance of an official document/death certificate stating the exact cause of death, i.e.,
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- C “Death due to Covid-19”, to the family members of the deceased who died due to Covid-19. For guidance, such guidelines may provide if a person has died after he was found covid positive and he has died within two to three months, either in the hospital or outside the hospital or at home, the death certificate/official document must be issued to the family members of the deceased who died due to Covid-19 stating the cause of death as “Died due to Covid-19”. He/she might have died even due to other complications, however, due to Covid-19. In the guidelines, it may also be provided that if the family member(s) of the deceased who died due to Covid-19 has/have any grievance that in the death
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- E certificate/official document the correct/exact cause of death is not mentioned, he/she must be provided with some remedy to approach the appropriate authority to get the death certificate/official document corrected. [Para 13][974-C-E, F-H; 975-A]
- 4. In so far as the prayer to issue an appropriate direction
- F directing the respondents – State Governments to fulfil their obligation to take care of the victims of the calamity and their family members is concerned, the prayer sought is too vague. Even otherwise, considering the counter affidavit filed on behalf of the Union of India it demonstrates the various reliefs declared by the Union Government. As such, no mandamus can be issued
- G directing the respondents – State Governments to declare a particular policy /relief/relief package in general and the same shall be within the domain of policy decision and would have financial implications also. [Para 14][975-B-C]

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5. Now so far as the relief sought to issue direction to the respondents – Union of India and others to provide social security in the form of insurance is concerned, from the XVth Finance Commission Report, it appears that the Finance Commission in its report has already made recommendations of the same and from the counter affidavit it appears that the Union Government has been actively considering the same in consultation with other stakeholders. Even otherwise, from the counter affidavit filed on behalf of the Union of India, it appears that the Central Government has already launched the Pradhan Mantri Garib Kalyan Package under which a comprehensive personal accident cover of Rs. 50 lakhs have been provided to 22.12 lakh health care providers throughout the country, including community health workers and private health workers who may have been in direct contact and care of Covid-19 patients and may be at risk of being impacted/infected by this. It is further reported that on account of unprecedented situation, private hospital staff/retired/volunteer/local urban bodies/contract/daily wage/ad-hoc/outsourced staff requisitioned by States/Central Hospitals/autonomous hospitals of Central /States/Union Territories, AIIMS & Institute of National Importance (INI)/hospitals of Central Ministries specifically drafted for care of Covid-19 patients are also covered under the scheme. The benefits under the said scheme have been extended for a further period of 180 days with effect from 24.04.2021. Therefore, it appears that sufficient care has been taken. However, some class might have been left out, like those persons working at pre-mortem. Thus, the Union Government may look into the same and cover them also who might have been left out and who can be said to be in direct contact of dead bodies of Covid-19 patients. Even, the Solicitor General has also stated at the Bar that the Union Government/appropriate authority shall look into the same. [Para 15][975-D-E, F-H; 976-A-C]

6.1. The National Disaster Management Authority is directed to recommend guidelines for ex gratia assistance on account of loss of life to the family members of the persons who died due to Covid-19, as mandated under Section 12(iii) of DMA 2005 for the minimum standards of relief to be provided to the persons affected by disaster – Covid 19 Pandemic, over and above

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- A the guidelines already recommended for the minimum standards of relief to be provided to persons affected by Covid-19. However, what reasonable amount to be offered towards ex gratia assistance is left to the wisdom of National Authority which may consider determining the amount taking into consideration, such as, requirement/availability of the fund under the NDRF/SDRF for other reliefs and the priorities determined by the National Authority/Union Government and the fund required for other minimum standards of relief and fund required for prevention, preparedness, mitigation and recovery and other reliefs to carry out the obligation under DMA 2005. The aforesaid exercise and appropriate guidelines be recommended, as directed hereinabove, within a period of six weeks. [Para 16][976-C-G]
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- D Covid-19", to the family members of the deceased who died due to Covid-19". While issuing such guidelines, the observations made hereinabove in paragraph 13 of the judgment be borne in mind. Such guidelines may also provide the remedy to the family members of the deceased who died due to Covid-19 for correction of the death certificate/official document issued by the appropriate authority, if they are not satisfied with the cause of death mentioned in the death certificate/official document issued by the appropriate authority. [Para 16][976-G-H; 977-A-B]
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- F recommendations made by the Finance Commission in its XVth Finance Commission Report bearing in mind paragraph 8.131 in consultation with other stakeholders and experts. [Para 16][977-B-C]
- G *Small Scale Industrial Manufacturers Association (Regd.) v. Union of India and others, 2021 (4) SCALE 415 – relied on.*
- H *DLF Universal Limited v. Director, Town and Country Planning Department, Haryana (2010) 14 SCC 1 : [2010] 15 SCR 85; Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Limited (2005) 7 SCC 234 : [2005] 2 Suppl.*

SCR 699; Bhavnagar University v. Palitana Sugar Mill (P) Ltd. (2003) 2 SCC 111 : [2002] 4 Suppl. SCR 517; Swaraj Abhiyan v. Union of India (2016) 7 SCC 498; Municipal Council, Ratlam v. Vardichan (1980) 4 SCC 162 : [1981] 1 SCR 97; Khatri (2) v. State of Bihar (1981) 1 SCC 627 : [1981] 2 SCR 408; Charan Lal Sahu v. Union of India, (1990) 1 SCC 613; Samatha v. State of A.P., (1997) 8 SCC 191; and Bachahan Devi v. Nagar Nigam, Gorakhpur, (2008) 12 SCC 372 – referred to.

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<u>Case Law Reference</u>		
[2010] 15 SCR 85	referred to	Para 13
[2005] 2 Suppl. SCR 699	referred to	Para 3.5
[2002] 4 Suppl. SCR 517	referred to	Para 3.5
(2016) 7 SCC 498	referred to	Para 3.6
[1981] 1 SCR 97	referred to	Para 3.6
[1981] 2 SCR 408	referred to	Para 3.6
(1990) 1 SCC 613	referred to	Para 5.1
(1997) 8 SCC 191	referred to	Para 5.1
(2008) 12 SCC 372	referred to	Para 6
2021 (4) SCALE 415	relied on	Para 7.2

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CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 554 Of 2021.

(Under Article 32 Of The Constitution Of India)

With

Writ Petiton (Civil) No.539 Of 2021.

S.B. Upadhyay, Sr. Adv., Reepak Kansal, Yadunandan Bansal, Ms. Ruhi Gupta, Harisha S.R., Advs. for the petitioner.

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Tushar Mehta, S.G., Ms. Aishwarya Bhati, K.M. Nataraj, ASGs., Rajat Nair, Amit Sharma, Sughosh Subramanian, B.V. Balaram Das, Chirag M Shroff, Dr. Monika Gusain, D. Kumanan, Rahul Joshi, Sumeer Sodhi, Varun Tankha, Hussain Ali, Siddhant Gupta, Anand S. Jondhale,

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- A Yashoda Jondhale, Abdul Qadir, Sunil Prem Lalla, Satish Pandey, Advs. for the Respondents.
Petitioner-in-person.
The Judgment of the Court was delivered by
M. R. SHAH, J.
- B 1. The applications for interventions are allowed in terms of the prayer made and the applicants are permitted to intervene in the present proceedings.
2. These two writ petitions have been filed in Public Interest seeking directions to the respondents – Central/State Governments to
- C provide ex gratia monetary compensation of Rs. 4 lacs or notified ex gratia monetary compensation to the families of the deceased who have succumbed to the pandemic of Covid-19, in view of Section 12 of the Disaster Management Act, 2005 (hereinafter referred to as ‘DMA 2005’). It is also further prayed for an appropriate direction to the
- D respondents – State Governments to fulfil their obligation to take care of victims of the calamity and their family members. One another relief which is sought in Writ Petition (Civil) No. 554 of 2021 is to issue an appropriate direction to the respondents – State Governments to issue any official document stating cause of death, to the family members of the deceased who died due to Covid-19. One additional relief which is
- E sought in Writ Petition (Civil) No. 539 of 2021 is to issue an appropriate writ of mandamus against the respondents – Union of India and others to provide social security and rehabilitation to the victims of Covid-19. Two applications have been filed in the aforesaid writ petitions by intervenors – family members who have lost their family members due to Covid-19, supporting the prayers sought in the respective writ petitions.
- F 3. Shri S.B. Upadhyay, learned Senior Advocate has appeared on behalf of the petitioner in Writ Petition (Civil) No. 554 of 2021. Shri Gaurav Kumar Bansal, learned Advocate has appeared as Party in Person in Writ Petition (Civil) No. 539 of 2021. Shri Sumeer Sodhi and Shri Anand S. Jondhale, learned Advocates have appeared on behalf of
- G the intervenors in the respective intervention applications. Shri Tushar Mehta, learned Solicitor General along with Shri K.M. Natraj and Ms. Aishwarya Bhati, learned Additional Solicitor Generals have appeared on behalf of the Union of India.
- H 3.1 Shri S.B. Upadhyay, learned Senior Advocate appearing on behalf of the petitioner in Writ Petition (Civil) No. 554 of 2021 has

submitted that admittedly Covid-19 is a “Notified Disaster” and therefore the provisions of the DMA 2005 shall apply. It is submitted that as such vide letter dated 14.03.2020, Ministry of Home Affairs, Union of India has stated that the Central Government, keeping in view the spread of Covid-19 virus in India, has decided to treat it as “Notified Disaster” for the purpose of providing assistance under State Disaster Response Fund (SDRF). It is submitted that earlier as per the letter/communication dated 8.4.2015, the Government of India, Ministry of Home Affairs (Disaster Management Division) issued revised list and norms of assistance from SDRF and National Disaster Response Fund (NDRF). It is submitted that as per the said letter, for any death which is caused due to disaster, an amount of Rs. 4 lacs is to be paid to the victim’s family, in addition to other reliefs. It is submitted therefore on the same line and applying the same criteria, the family members of those who have succumbed to Covid-19 are to be provided ex gratia monetary compensation of Rs. 4 lacs, as Covid-19 is also treated, considered and declared as “Notified Disaster”. A

3.2 It is further submitted by Shri Upadhyay, learned Senior Advocate appearing on behalf of the petitioner that Section 12 of the DMA 2005 mandatorily provides for the National Authority defined under Section 3 of the said Act to recommend guidelines for the minimum standards of relief to be provided to persons affected by the disaster and it shall include, inter alia, ex gratia assistance on account of loss of life. It is submitted therefore that it is the statutory duty of the National Authority to provide in the guidelines for ex gratia assistance on account of loss of life who died due to Covid-19, which is declared as a “Notified Disaster”. B

3.3 It is submitted that to provide such ex gratia assistance on account of loss of life is not only a statutory obligation under Section 12 of the DMA 2005, but it is the constitutional obligation also since it also affects the right to life guaranteed under Article 21 of the Constitution of India. It is submitted that the word “shall” occurring twice in Section 12 of the Act puts a constitutional and statutory obligation on the part of the Central/State Government to recommend guidelines for providing ex gratia assistance which is in the nature of sustenance assistance. It is submitted that as such keeping the aforesaid in mind, earlier for the years 2015-2020 vide Ministry of Home Affairs letter dated 08.04.2015 the Government has fixed norms of assistance from SDRF and NDRF for providing succour to the aggrieved family. C

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- A 3.4 It is further submitted that the word “shall” occurred in Section 12 of the DMA 2005 should be construed as “mandatory” and shall not be read as “may”, as contended on behalf of the Union of India. It is submitted that if the word “shall” used in Section 12 of the DMA 2005 is read as “may”, as sought to be canvassed on behalf of the Union of India, the concept of “situation interpretation” evolved would negate the very object and purpose enshrined in Section 12 of the DMA 2005 since the purpose is immediate sustenance assistance to the aggrieved family. Heavy reliance is placed on the decision of this Court in the case of *DLF Universal Limited v. Director, Town and Country Planning Department, Haryana* (2010) 14 SCC 1 (para 13) and *Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Limited*, (2005) 7 SCC 234 (para 85).

- B 3.5 Relying upon the decision of this Court in the case of *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.*, (2003) 2 SCC 111 (paras 25 & 26), it is submitted that when the language used in the section/provision is plain and unambiguous, no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute. It is submitted that in the present case the language used in Section 12 of the DMA 2005 is plain and unambiguous and therefore the word “shall” shall be read as “shall” and the same should be construed as mandatorily to be provided.

- C 3.6 Relying upon the decision of this Court in the case of *Swaraj Abhiyan v. Union of India*, (2016) 7 SCC 498 (paras 120 to 123), it is submitted that as held by this Court, a plea of financial inability cannot be an excuse for disregarding statutory duties. Reliance is also placed on the decisions of this Court in the cases of *Municipal Council, Ratlam v. Vardichan*, (1980) 4 SCC 162; and *Khatri (2) v. State of Bihar*, (1981) 1 SCC 627 and it is submitted that as observed the State may have its financial constraint and its priorities in expenditure, the law does not permit any government to deprive its citizens of constitutional rights on a plea of poverty. It is submitted therefore that the plea taken by the Central Government that the prayer of the petitioner for the payment of ex gratia compensation for loss of life due to Covid-19 pandemic to the aggrieved families is beyond the fiscal affordability may not be accepted. It is submitted that the fiscal affordability/financial constraint cannot be a ground not to fulfil statutory obligation under the DMA 2005 and the constitutional obligation as provided under Article 21 of the Constitution of India.

3.7 It is further submitted by Shri Upadhyay, learned Senior Advocate appearing on behalf of the petitioner that it is the duty of every government, either Central or State, to see that the correct/accurate death certificates/official documents are issued mentioning the correct cause of death arising out of Covid-19 pandemic. It is submitted that by not issuing the accurate/correct death certificate/official document with correct cause of death – Covid-19 pandemic, the family members of the deceased, who died due to Covid-19 pandemic, will be deprived of the benefits of the schemes, if any, declared by the Central/State Governments. It is submitted that not only that but by not issuing the correct/accurate death certificates mentioning the correct cause of death – Covid-19 pandemic, even the other citizens would be misled and the correct figure of deaths arising out of Covid-19 would not be known. It is submitted that if the number of persons who died because of Covid-19 are shown less, people would be misled and many a times they would become negligent. It is submitted therefore that it is in the larger public interest also to issue correct/accurate death certificate with correct cause of death. It is submitted that there is a requirement of simplifying the procedure for issuance of death certificate mentioning the cause of death arising out of Covid-19.

4. While adopting the submissions made by Shri Upadhyay, learned Senior Advocate, Shri Gaurav Kumar Bansal, learned Advocate who has appeared as Party in Person, in addition, has further submitted that in the counter affidavit filed by the Union of India, one of the grounds to refuse to pay ex gratia amount of compensation to those families whose members have died due to Covid-19 is that Covid-19 is a continuous disaster which was not envisaged by the Legislature at the time of enactment of DMA 2005 and therefore the provisions of DMA 2005 have to be implemented differently. It is submitted that the submission on behalf of the Union of India that term “disaster” which was envisaged while enacting DMA 2005, there were broadly those disasters resulting from any catastrophe or calamity which is one time happening or few incidents taking place periodically for some time, hence considering the very nature of Covid-19, the Covid-19 disaster has to be treated differently from the term “Disaster” contemplated by the Legislature, while enacting DMA 2005. To the aforesaid, it is submitted that once Covid-19 is declared as a “Notified Disaster/Disaster” and even otherwise as per Section 2(d) of the DMA 2005, Covid-19 Pandemic is a “Disaster” and therefore all the provisions including Section 12 of the DMA 2005 shall be applicable and come into play.

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- A 4.1 It is submitted that even otherwise recently in the year 2019, the Union of India has issued National Disaster Management Plan 2019 (NDMP 2019), wherein two types of Disasters are defined, i.e., (1) Natural Hazards, and (2) Man Made Disasters. It is further submitted that NDMP-2019 has further classified its Natural Hazards and Biological Natural Hazards has been included as “Disaster”. It is submitted that therefore Covid-19 being a Biological Disaster comes within the purview and ambit of Section 2(d) of the DMA 2005 and therefore is a “Disaster” under DMA 2005. It is submitted that therefore to deny that Covid-19 is not a disaster has no substance and may not be accepted as even the Central Government on 14.03.2020 decided to treat Covid-19 as “Notified Disaster”.
- B 4.2 It is submitted that even the XVth Finance Commission’s Report which is prepared after Covid-19 Pandemic suggests that the Central Government has always considered Covid-19 as a “Disaster” as mentioned in Section 2(d) of the DMA 2005. It is submitted therefore that the submission on behalf of the Union of India that Covid-19 is not that kind of disaster which Legislature envisaged while enacting DMA 2005 is nothing but an afterthought.
- C 4.3 Now so far as the stand taken on behalf of the Union of India that the term “shall” used in Section 12 will have to be read as “may” while reading the instances given in Section 12 (i) to (iii), it is submitted that the Parliament has used the word “shall” twice in Section 12 of DMA 2005 which clearly shows that National Disaster Management Authority (NDMA) is not only bound to recommend guidelines for the minimum standards of relief but such reliefs must contain the provisions of ex gratia assistance on account of loss of life. It is submitted that further, use of word “shall” in Section 12 of DMA 2005 clearly indicates the intention of the legislature that the said provision is mandatory one and as such it is the statutory duty of the Union Government/NDMA to issue guidelines providing ex gratia compensation to the family members of persons who have died due to Covid-19 virus while providing their services in relief operations or when they were associated with preparedness activities to combat Covid-19 pandemic.
- D 4.4 It is submitted that even the Union of India, Ministry of Home Affairs vide its letter dated 8.4.2015 also issued the revised list of items of norms of assistance from SDRF/NDRF wherein it is clearly mentioned that Rs. 4 lacs shall be provided for ex gratia payment to the families of

deceased persons. It is submitted that therefore the word “shall” used by the legislature in Section 12 must be given its literal meaning unless context requires otherwise.

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4.5 It is further submitted by Shri Gaurav Kumar Bansal, learned Advocate that granting ex gratia for one disease while denying the same to the persons suffering from other disease would create unfairness and invidious discrimination and the same cannot be permitted, more particularly when the Ministry of Home Affairs or the Central Government have themselves notified Covid-19 as “Notified Disaster” under DMA 2005.

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It is submitted that granting ex gratia for one disaster (like earthquake, floods, cyclones etc.) while denying the same to other disaster (like Covid-19) would not only create unfairness and discrimination but also cause undue hardship on those families who have lost their loved ones due to Covid-19 virus.

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4.6 Now so far as the submission on behalf of the Union of India pleading fiscal affordability while making provisions for ex gratia to the families of all Covid-19 deceased persons, it is submitted that as such there are some States like States of Bihar, Karnataka, Delhi which are paying one time compensation in the form of ex gratia to those families whose members have died due to Covid-19 pandemic.

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4.7 It is further submitted that item No. 23 of the Concurrent List of Schedule VII of the Constitution of India deals with social security & social insurance and it is on the basis of this item that Parliament enacted DMA 2005. It is submitted that one of the Foundation Stones of enacting DMA 2005 is to provide social security & social insurance to the persons and families affected by disasters. It is submitted that therefore denying the ex gratia payment to the families of Covid-19 deceased shall not only hit on the foundation stone on which DMA 2005 is standing but shall also defeat the whole purpose of DMA 2005. It is submitted that because of Covid-19 pandemic, lakhs of families have not only lost their near and dear but have also lost the sole bread earner who was nurturing the range of persons, i.e., small kids to elderly persons. It is submitted that due to loss of sole bread earner, lakhs of families have completely devastated and destroyed. It is submitted that grant of respectable and reasonable one-time compensation in the form of ex gratia as provided under Section 12(iii) of DMA 2005 to the “lowest of the low” to the “needy and to the families of frontline workers” who lost their lives

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- A while acting as “Corona Warrior” shall not only provide a sense of social security to them but shall also serve the letter and spirit of DMA 2005.

- 4.8 It is submitted that even the Finance Commission in its XVth Finance Commission’s Report at point number 8.132 & 8.133 has also suggested the Government of India to launch National Insurance Scheme for Disaster Related Deaths in India which will not only be able to work as Social Protection Scheme but will also not increase the administrative burden on the Government.

5. Shri Sumeer Sodhi, learned Advocate appearing on behalf of the intervenors has submitted that it is the constitutional obligation of the Government to take steps to ensure that the minimum facilities of life are provided to every person, and there are equalities of income and material resources as far as democratically possible. It is submitted that the preamble of the Constitution of India declares India as a “Socialist” country and this term itself gives a substantial proof of the existence of social welfare responsibilities of the government. It is submitted that Article 39A of the Constitution of India lays down a duty on the government to frame its policies in such a manner that the citizens get equal right to an adequate means of livelihood. It is submitted that though no amount of money will be enough to mitigate the loss of a family member but still the government as its social responsibility shall frame a national scheme for providing compensation to the families of those people who have died due to Covid-19 pandemic so that they all can live a dignified life and fulfil their basic necessities.

- 5.1 Relying upon the decision of this Court in the case of *Charan Lal Sahu v. Union of India, (1990) 1 SCC 613* (popularly known as “Bhopal Gas Leak Disaster case”), it is submitted that it is held in the aforesaid case that the Government has the sovereign power of guardianship over the persons under disability and it is its duty to protect them. Reliance is also placed on the decision of this Court in the case of *Samatha v. State of A.P., (1997) 8 SCC 191* (para 72).

- G 5.2 It is further submitted by Shri Sodhi, learned Advocate appearing for the intervenors that the Government cannot be permitted to abdicate from its constitutional duty by claiming fiscal constraint or inability. It is submitted that the submission of the Government that payment of ex gratia compensation to all deceased persons who have died due to Covid-19, is beyond their fiscal affordability cannot be allowed as a ground for escape. It is submitted that if the Government is allowed

to claim fiscal inability as a ground to get away from its constitutional duty, then it will set a dangerous precedent and every time when the government will be in a tight spot, it may legally defy duties under the laws by hiding behind the shield of fiscal inability to protect itself from providing relief.

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5.3 It is submitted that when Covid-19 virus rapidly started spreading in our country, the Union of India proactively notified “Covid-19” as a pandemic in order to exercise powers under DMA 2005 vide letter dated 14.03.2020. It is submitted that now when the responsibility of mitigating the loss of life under DMA 2005 arises, the government is abstaining from its responsibility and trying to escape from its duty to provide compensation to people who have lost their loved ones. It is submitted that in the modified list of items and norms of assistance from SDRF vide letter dated 14.03.2020, the Government of India has withdrawn the clause of ex gratia compensation. It is submitted that Section 12 of DMA 2005 explicitly states that the NDMA shall recommend guidelines for minimum standards of relief to be provided to the persons affected by disaster. It is submitted that special emphasis should be laid on Section 12 (ii) and Section 12(iii) of DMA 2005.

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5.4 It is further submitted that the said withdrawal has resulted in an anomaly which has no justifiable reasoning. It is further submitted that there must be a uniform policy on compensation. It is submitted that currently different States are paying different amount of compensation to the families of the deceased persons. It is submitted that the State of Bihar has announced that it will provide Rs. 4 lacs compensation in case of Covid-19 death; State of Madhya Pradesh has announced that an amount of Rs. 1 lac shall be provided and the Government of Delhi has recently announced that the amount of compensation in case of Covid-19 death shall be Rs. 50,000/. It is submitted that such incongruity has crept in only because of the wrongful and illegal act of withdrawal of monetary compensation by the Central Government. It is submitted that there cannot be any discrimination in benefits given to family members of those who have died due to Covid-19 pandemic.

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6. While opposing the present petitions, Shri Tushar Mehta, learned Solicitor General has submitted that it is not the case on behalf of the Union of India that Covid-19 is not a “Notified Disaster/Disaster”. It is submitted that it is also not in dispute that the provisions of DMA 2005 shall be applicable with respect to Covid-19 pandemic. It is submitted

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- A that as such various guidelines/SOPs are issued and the steps taken under the provisions of DMA 2005. It is further submitted that even the Union government is also not facing financial constraint and/or pleading fiscal affordability. It is submitted that the issue is not of fiscal affordability, but rather of the most rational, judicious and optimum usage of fiscal and all other resources of the nation. It is submitted that question is of priorities and not facing financial constraint. It is submitted that it may not be misconstrued that the Government is opposing grant of ex gratia payment due to financial constraint.

- 6.1 It is submitted that as mentioned in the detailed and comprehensive affidavit filed on behalf of the Union of India, important steps have been taken by the Central Government under DMA 2005, as also, the steps taken specifically as Nation's response to Covid-19 pandemic wherein a much more comprehensive, multi-pronged, multi-sectoral, whole of society and whole of government, while at the same time dynamic approach has been adopted, in tune with the evolving nature
- B of Covid-19 virus.

- 6.2 It is submitted that various steps have been taken by the Union of India, to strategize nation's response to Covid-19, a once in a lifetime pandemic inflicted on the entire world, wherein not just the funds of NDRF and SDRF, but even from the Consolidated Fund of India are
- C being utilised as per the advice of the experts. It is submitted that specific steps have been taken for ramping up the entire health infrastructure, preparedness, relief, restoration, mitigation and reconstruction, in a very short time, to include, inter-alia:

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 - a) Testing, tracing, treatment and quarantine facilities;
 - b) Augmenting hospital facilities, oxygenated beds, ventilators, ICU facilities etc.;
 - c) Augmentation of health workforce and their insurance;
 - d) Augmentation, allocation, supply and transportation of oxygen and other essential drugs;
 - e) Research, development, enhanced production and administration of vaccinations to rapidly cover one of world's largest eligible population of beneficiaries;
 - f) Ensuring food security to the vulnerable groups;
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- g) Minimising the adverse impact of large-scale economic disruptions by multi-pronged approach; and
- h) Rehabilitation, protection and education of children orphaned due to Covid-19.

6.3 It is submitted that different disasters have different effects/ impacts. It is submitted that considering the very nature of Covid-19 pandemic and its effects/impacts, the guidelines/reliefs provided/to be provided have to be different from the disasters contemplated by the legislature while enacting DMA 2005. It is submitted that in the “disaster” originally contemplated, is a one-time occurrence or the same occurs repeatedly for few times like floods, earthquake, cyclone, different kinds of “interim measures of relief” are to be provided, as generally it is not difficult to deal with such disasters which do not require day-to-day expenditure, day-to-day monitoring, day-to-day change in priorities and day-to-day change in the methods and modalities to deal with the same. It is submitted that it is this difference which is relevant while deciding the scope and ambit of Section 12 of DMA 2005, in the present context.

6.4 It is submitted that it is always desirable that any disaster of the nature of earthquake, flood, cyclone etc., an ex-gratia payment to every deceased is stipulated in the form of guidelines contemplated under Section 12. However, when the disaster not only remains an on-going disaster but requires governmental expenditure, spending from public exchequer, monitoring the disaster on a daily basis and treating the persons with the best, everchanging and modern facilities available, the concepts of “Minimum Standards of Relief”, under Section 12 will differ. In a scenario like an on-going pandemic, the Central Government will have to provide for a different “Minimum Standards of Relief” keeping the population suffering from the disaster in mind, broadening its own vision, providing for a multi-thronged approach and putting life, health and safety of the citizens at the topmost priority, for which expenditure is needed on a daily basis.

6.5 It is submitted that the Central Government, by way of “Minimum Standards of Relief” under Section 12, has already taken several steps providing for substantial and speedy measures by way of increase in the health, infrastructure, ensuring food safety to every citizen (as the present disaster required several lockdowns resulting in loss of earning), insurance cover to those who were dealing with the pandemic by directly remaining near to Covid infected patients etc.

- A 6.6 It is submitted that Covid-19 has come as a novel virus and disease resulting in a pandemic for the entire world. The entire world has faced this phenomenon with differing intensity, mutations and waves, impacting life itself, healthcare systems, livelihood, access to amenities, liberties etc., making it a global public health challenge affecting all countries. It is submitted that therefore the Central Government adopted
- B a multi-pronged, multi-sectoral, whole of society and a whole of government approach, along with the National Plan, in order to tailor the response of the nation in tune with the evolving nature of the virus. It is submitted that the Government of India while implementing DMA 2005 has applied a different approach keeping the unprecedented nature of
- C disaster in mind, while supporting individual States/UTs as per their specific needs. It is submitted that such support for fighting the pandemic situation has consisted of ramping up the health infrastructure in a short time, which include testing, treatment, and quarantine facilities on large-scale on the one hand, and augmenting hospital facilities, which include oxygenated beds, ventilators, and ICU facilities, on the other, in which
- D the fund of not only NDRF but even from the Consolidated Fund of India is being spent. It is submitted that this is an on-going effort, which will have to be and is being scaled up further in response to successive waves of Covid-19. It is submitted that there is a large-scale increase in the health structure during the course of the pandemic as under:

	TYPE OF HEALTH FACILITIES	BASELINE	CURRENT STATUS	NO OF FOLD INCREASE
E	Cat I. COV ID dedicated hospitals	163	4096	25-fold increase
	Cat II. Dedicated COVID Health Center	0	7,929	
	Cat III. Dedicated COVID Care Centre	0	9,954	
	Oxygen supported beds	50,583	3,81,758	7.5-fold increase
	Total isolation beds (excluding ICU beds)	41,000	17,17,227	42-fold increase
F	Total ICU beds	2,500	1,13,035	45-fold increase
	Isolation railway coaches	0	5,601	
	AUGMENTATION OF HEALTH WORKFORCE			
	More than 150,000 health personnel engaged (7,024 MOs, 3,680 Specialists, 35,996 Staff Nurses, 18,649 NHWs, 1,01,155 community volunteers, Accredited Social Health Activist (ASHA)'s and ASHA Facilitators, 48453 other support staffs).			
	INSURANCE COVERAGE FOR HEALTH WORKERS			
	Insurance coverage to 22.12 lakhs health workers including ASHAs fighting COVID-19.			
G	INCREASE IN TESTING CAPACITY			
	<ul style="list-style-type: none"> ➢ 2,621 testing labs (1,266 Government and 1,355 Private) ➢ Phenomenal increase in testing capacity: 30,000 tests/day in April'20 increased to a high of 22 lakhs tests/day. ➢ Cumulative – over 36.1 crore tests conducted for COVID-19. 			
H	INCREASE IN SURVEILLANCE			
	<ul style="list-style-type: none"> ➢ Screening at all port of entry/exit, State/District rapid response teams. ➢ Contact tracing through extensive network of frontline health workers. ➢ State/city-specific sero-surveillance studies to estimate and monitor trends. 			

6.7 It is submitted that due to the peculiar nature of the COVID-19 pandemic, it was advisable not to formulate a strait jacket guideline and a cast in stone formula on “Minimum Standards of Relief”. It is submitted that in order to enable the authorities to deal with the ever changing situations in the best possible manner, utilising all the financial, human, infrastructural and all resources of the nation rationally, judiciously and keeping the future contingencies in mind, as the world does not know how this pandemic will take shape in the future, the Union of India has taken a conscious policy decision to provide relief(s) depending upon the ever changing needs through various Ministries/Departments and such actions are coordinated and monitored by the National Executive Committee, as contemplated in the Disaster Management Act, 2005 in general and under Section 10 in particular.

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It is submitted that the following measures have been taken by the Union of India/NDMA:

- (1) The regular funding to deal with COVID-19 has been provided under the National Health Mission; D
- (2) In order to supplement the efforts of the State Governments, the Central Government on 14th March 2020, by way of a special one-time dispensation, decided to treat COVID-19 as a “notified disaster” for the purpose of providing limited assistance towards containment measures under SDRF, E
- (i) Measures for quarantine for sample collection and screening
- (ii) Procurement of essential equipments/ labs for response to COVID-19. F
- (iii) To deal with problems of migrant labourers, on 28th March, 2020, the Central Government allowed use of SDRF for setting up relief camps and to provide food, water, etc. to migrant workers and other stranded people. G
- (iv) On 23rd September, 2020, the Central Government further allowed use of SDRF by the States for oxygen generation for COVID-19 patients in States, to strengthen transport services for transporting oxygen, and setting up containment zones, COVID-19 care centres. H

- A (v) for the containment measures allowed under SDRF, State Governments were allowed to spend up to a maximum of 35% of the annual allocation of funds under SDRF for the financial year 2019-20. The ceiling of 35% was further enhanced to 50% during the financial years 2020-21.
- B (vi) The State Governments were allowed to utilize up to 10% of their opening balance of SDRF as on 01.04.2020 by way of one-time special dispensation, for COVID-19 containment measures during 2020-21.
- C (vii) Keeping in view the recent surge in COVID-19 cases in the country, by way of a special dispensation, Central Government, further extended the dispensation allowed to States to utilise up to 50% of their annual allocation of SDRF, for containment measure of COVID-19 during the financial year 2021-22.
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6.8 It is further submitted that COVID-19 pandemic has also been an economic disruption. However, the government has made herculean efforts to deter it from becoming a matter of economic distress, especially for the poorer and marginalised sections of society. Considering the

- E economywide impact, the Government of India has announced several packages, protecting the poor and vulnerable groups, extending cheap credit to small and medium 18 businesses, and reducing taxes in many areas. It is submitted that these packages consist of lakhs of crores announced through the Pradhan Mantri Garib Kalyan Yojana (PMGKY)
- F and the Prime Minister Atma Nirbhar Swastha Bharat Yojana (PMANSBY). It is submitted that to sustain the economic activities to deal with the economic impacts of disaster, the Central Government had to come out with several schemes either itself or through the directives issued by the Reserve Bank of India to the banks for the purpose of waiver of interest and/or restructuring of loan accounts. This has created
- G a huge burden on the overall economy of the nation and exchequer of the Central Government, in particular. However, the Central Government is doing its best to maintain its financial equilibrium without compromising on the health, safety, food security and economic stability of the country.

- 6.9 It is further submitted that the Government of India has also
- H decided to vaccinate the people of India as the most reliable preventive

measure. To achieve this goal by the end of this year, the Government has taken all the steps to scale up the production, supplies, and import of vaccines. In the annual budget for 2021-22, the Government of India has allocated Rs. 35,000 crores for the mass vaccination campaign.

6.10 It is further submitted that, the release of funds under National Health Mission for FY 2018-19, FY 2019-20, FY 2020-21 and 2021-22 are as under:

F.Y.	BUDGET ESTIMATE (B.E.)	REVISED ESTIMATE (R.E.)	RELEASE
2018-19	25,154.61	26,118.05	26,027.62
2019-20	27,989.00	28,783.60	28,168.81
2020-21	27,989.00	29,316.75	29,747.84
2021-22	31,100.00	N.A.	1621.70

6.11 It is further submitted that in FY 2019-20, in addition to the above, funds to the tune of Rs. 1113.21 Crore were released to the States /UTs towards management and containment of COVID-19 over and above their normal resource envelope under NHM. The release was from the savings of Department of Health and Family Welfare (DoHFW). Therefore, the total Release under NHM (including COVID-19): Rs. 29,282.02 Crore (Rs. 28,168.81 Cr + Rs.1,113.21 Cr).

6.12 It is further submitted that with regard to FY 2020-21, in addition to the above, funds to the tune of Rs. 8257.89 Crore have been released to the States/UTs under the India COVID-19 Emergency Response and Health Systems Preparedness Package through NHM, towards management and containment of COVID-19 pandemic, details of which are as under:

FINANCIAL SUPPORT UNDER EMERGENCY COVID RELIEF PACKAGE				
S. No.	Programme	Approved Budget (Dec.' 2020)	Actual Expenditure (as on 2 nd Jun 21)	
		(in Rs. crores)	(in Rs. crores)	(%)
1	National Health Mission	8,310	7580.14	91.2
2	Indian Council for Medical Research	2,475	1275.00	51.5
3	National Centre for Disease Control	95	74.10	78.0
4	Central Procurement Division	3,400	3389.70	99.7
5	Ministry of Railways	720	720.00	100.0
	Total	15,000	13038.97	86.9

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- A 6.13 It is further submitted that with regard to the prayer of the petitioner to allow ex gratia compensation/assistance to the family members of the deceased persons who have died due to COVID-19, while providing their services in relief operations or when they were associated with preparedness activities to combat COVID-19 pandemic,
- B the Central Government, by its pro-active and pre-emptive approach, had launched the Pradhan Mantri Garib Kalyan Package (PMGKP) as early as on 30.03.2020. Under the scheme, a comprehensive personal accident cover of Rs. 50 Lakh has been provided to 22.12 Lakh Health Care Providers throughout the country, including community health workers and private health workers who may have been in direct contact
- C and care of COVID-19 patients and may be at risk of being impacted/ infected by this. It is submitted that, further on account of the unprecedented situation, private hospital staff/retired/ volunteer/local urban bodies/contract/daily wage/ad-hoc/outsourced staff requisitioned by states/central hospitals/autonomous hospitals of central/states/UTs,
- D AIIMS & Institute of National Importance (INI)s/hospitals of Central Ministries specifically drafted for care of COVID-19 patients were also covered under the scheme. The benefits under the said scheme have been extended for a further period of 180 days (w.e.f. 24.04.2021). The scheme is being implemented through an insurance policy of New India Assurance Company. In order to further expedite the processing of
- E claims, a new system has been introduced as per which the claims are now being processed by the District Collectors and forwarded to the insurance company for release of funds to the claimants. So far, ₹442.4 crore have been released to the insurance company in this regard. Herein, 477 claims of healthcare workers under the scheme have already been given the benefits, and further 344 claims of healthcare workers are under process.

- G 6.14 It is further submitted that the financing of Disaster Risk Management (DRM) under the Disaster Management Act, 2005, is based on the recommendations of successive Finance Commissions, constituted under Article 280 of the Constitution of India. It is further submitted that, the allocation of the amount under NDRF and SDRF; guidelines on constitution and administration of SDRF and NDRF; and the items and norms for providing for relief assistance from SDRF/NDRF are based on the constitutional recommendations of the successive Finance Commissions. It is further stated that the successive Finance Commissions, after considering all the facets of disaster risk management,

have recommended the expenditure for providing financial relief against 12 identified disasters and accordingly, the victims of 12 disasters, viz. cyclone, drought, earthquake, fire, flood, tsunami, hailstorm, landslide, avalanche, cloud burst, pest attack and frost & cold wave, are provided relief from these funds, which is mentioned in the memorandum dated 08.04.2015. It is submitted that, the XV-Finance Commission in para 8.11 of Chapter 8 of its report for the period 2021-22 to 2025-26, while making allocation under NDRF and SDRF inter alia, has chosen, to deal with the issue of financing of Covid-19 pandemic. It is submitted that the recommendations of XVth Finance Commission's Report have been made in light of the experience gained and also the context of the unprecedented Covid-19. It is submitted that this report made recommendations for Disaster Risk Management, covering the period from 2021-2022 to 2025-2026, expanding the scope of Disaster Management beyond the traditional response and relief functions, to include preparedness, mitigation, recovery and reconstruction, as reflected in chapter 8 of the XVth Finance Commission's Report. It is submitted that this report of XVth Finance Commission along with the Explanatory Memorandum was laid before the Parliament, as mandated under Article 281 of the Constitution of India.

It is submitted that in accordance with the recommendations of XVth Finance Commission and the domain subject matter experts, the Union of India devised the strategy to deal with, the extremely contagious, volatile and ever changing impact of the mutations of the virus COVID 19, in the best possible manner, utilizing all the financial, human and infrastructural resources of the nation, rationally and judiciously, also keeping in mind the future contingencies, rather than formulating the response in the straitjacket formula of Minimum Standards of Relief, as contemplated under the National Disaster Management Act, 2005.

It is submitted that therefore the issue is not of fiscal affordability, but rather of the most rational, judicious and optimum usage of fiscal and all other resources of the nation.

6.15 It is further submitted that, to appreciate the context of an 'Ex-Gratia' payment, Section 12 of Disaster Management Act, 2005 needs to be read with section 46, wherein sub-section 46(2) reads as under:

"The National Disaster Response Fund shall be made available to the National Executive Committee to be applied

- A *towards meeting the expenses for emergency response, relief and rehabilitation in accordance with the guidelines laid down by the Central Government in consultation with the National Authority.”*

The Central Government has already declared COVID-19 as a “notified disaster” under the Disaster Management Act, 2005. It is thereby submitted that, as provided under Section 12 of the Disaster Management Act, 2005, the National Disaster Management Authority (NDMA) has already issued general Guidelines for “Minimum Standards of Relief” under Section 12 of the Disaster Management Act. However, on the issue of ‘*ex-gratia*’ assistance on account of loss of life, the guidelines provide that the norms provided by Government of India (Ministry of Home Affairs) for assistance from SDRF should be the Minimum Standards of Relief.

6.16 It is further submitted that, the XVth Finance Commission, in para 8.141 of its report, had considered the request of the State Governments for inclusion of a number of calamities under the eligible list of disasters under SDRF/NDRF. Herein, after consideration, in para 8.143 of its report, the Commission had observed that the list of notified disasters eligible for funding from State Disaster Risk Management Fund (SDRMF) and National Disaster Risk Management Fund (NDRMF) [new nomenclature used by XVth Finance Commission which includes Response Fund and Mitigation Fund] covers the needs of the States to a large extent and thus did not find much merit in the request to expand its scope.

6.17 It is further submitted that, in order to supplement the efforts of the State Government, the Central Government, on 14th March, 2020 by way of a special one-time dispensation, decided to treat COVID-19 as a “notified disaster” for the purpose of limited assistance towards containment measures under SDRF on (i) Measures for quarantine for sample collection and screening (ii) Procurement of essential equipments/ labs for response to COVID-19. Further, to deal with problems of migrant labourers, on 28th March, 2020, the Central Government allowed use of SDRF for setting up relief camps and to provide food, water, etc. to migrant workers and other stranded people. On 23rd September, 2020, the Central Government further allowed use of SDRF by the States for oxygen generation for COVID-19 patients in States, to strengthen transport services for transporting oxygen, and setting up containment zones, COVID-19 care centres.

6.18 It is further submitted that, *ex-gratia* payment under SDRF/NDRF guidelines issued under section 46(2) of the Disaster Management Act, 2005 is available to persons who have died, in case of 12 notified disasters and other local natural disasters which are notified by the State Governments. However, COVID-19 Pandemic/Disaster has not been recommended by the XVth Finance Commission for financing of relief measures from SDRMF/NDRMF, which includes *ex-gratia* payment.

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6.19 So far as the recommendations of the XVth Finance Commission on insurance is concerned, it is submitted that, the XVth Finance Commission, in para 8.131 of its report, has proposed 4 insurance interventions, which needs to be further studied by the NDMA and the relevant Ministries about their feasibility. In this regard, it is submitted that the recommendations of the Commission are under consultation by NDMA with the stakeholders concerned.

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6.19.1 It is submitted that, presently there is no guideline/policy/scheme in NDMA which relates to National Insurance mechanism that may be used to pay for disaster related deaths due to Covid-19. In this regard it is submitted that, the XVth Finance Commission has proposed four Insurance interventions which need to be studied further by the NDMA and relevant ministries for their feasibility. These interventions are:

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16.1 National Insurance Scheme for Disaster-related Deaths

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16.2 Synchronising Relief Assistance with Crop Insurance

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16.3 Risk Pool for Infrastructure Protection and Recovery

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16.4 Access to International Reinsurance for Outlier Hazard Events

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6.19.2 It is submitted that, in this context, in February 2020, a 'National Workshop on Risk Insurance' was held in Mumbai which was attended by Member Secretary National Disaster Management Authority (NDMA), National Institute of Disaster Management (NIDM), Insurance Regulatory and Development Authority of India (IRDAI), States Functionaries and leading insurance companies. Subsequently in the Workshop, upon the suggestion of Member Secretary (NDMA), a Working Group (WG) was constituted comprising members from NIDM, NDMA, IRDAI as well as CEO's/Chairman of Insurance Companies for deliberations on risk insurance coverage against natural disasters in India. In its final report submitted in April, 2021 to DM Division of Ministry

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- A of Home Affairs, the WG has recommended a parametric trigger-based insurance solution that can pay claims in the event of earthquake, cyclone, extreme precipitation or river flood. In this regard, the NDMA has requested NIDM to conduct a joint meeting/session with NDMA, NIDM, and with the proposed States that have been selected for a pilot project, by the WG.
- B 6.19.3 It is submitted that, as States are the major stakeholders and also beneficiaries of proposed insurance schemes, their recommendations and availability of loss data are the crucial factors to be considered before moving ahead. However, the insurance coverage being deliberated does not cover risk insurance from pandemics or epidemics like the COVID-19.
- C 6.19.4 It is further submitted that, the Asian Development Bank (ADB) has also proposed a new ADB Technical Assistance (TA) concept for promoting disaster risk transfer, including insurance in India. ADB through its TA is looking forward to develop disaster risk financing solutions for Indian States. In this regard, a meeting was also held on 05.04.2021 between ADB and NDMA. Herein, during the course of the meeting, ADB proposed for a hybrid Insurance solution i.e., combination of Parametric Insurance and Indemnity insurance; and also proposed for a joint meeting between NDMA, Department of Financial Services (DFS), and MHA.
- D 6.19.5 It is submitted that, NDMA has requested ADB to conduct the proposed meeting as per convenience of MHA/DFS and inform NDMA accordingly. However, the meeting scheduled on 12.04.2021, had to be postponed due to the second wave of the pandemic. It is submitted that however, as such, and as submitted hereinabove and so stated in the counter affidavit, all frontline workers are covered under the insurance, the particulars of which are stated hereinabove.
- E 6.20 Now so far as the issue with respect to the issuance of the correct and accurate death certificates with correct cause of death due to Covid-19 and recording of Covid-19 deaths are concerned, it is submitted that there is a statutory mechanism and any breach of the guidelines on the same would be a criminal offence as stipulated under Section 188 of the IPC. It is submitted that any death resulting from Covid-19 shall have to be certified, i.e., as Covid death, failing which, everyone responsible (including the certifying doctor) shall be responsible for penal consequences.

6.20.1 It is submitted that the broad guidelines for appropriate recording of Covid-19 related deaths in India were prepared by the Indian Council of Medical Research (ICMR) and were issued on 10.05.2020 for all States for implementation and subsequently placed on the ICMR website. This was further communicated to the MoHFW, Government of India. Thereafter, the Ministry communicated it to all the States and UTs. This guidance is to help and guide doctor's certification for Covid-19 related deaths. It is submitted that the guidelines clearly state that positive deaths, implicate deaths relating to Covid-19. It is submitted that further these guidelines are in sync with the World Health Organisation Mortality Coding.

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6.20.2 It is further submitted that, on the question of issuance of death certificates, the registration of birth and death is done under the provisions of a Central Act, namely, Registration of Births and Deaths Act, 1969. This Act was enacted in the year 1969 and was enforced in most of the States/UTs from 1st April, 1970 to promote uniformity and comparability in the registration of Births and Deaths across the country.

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6.20.3 It is further submitted that the Registrar General of India at the Central level coordinates and unifies the activities of registration throughout the country and at the same time allowing enough scope for the State Governments to evolve an efficient system of registration suited to the characteristics of the respective administration.

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6.20.4 It is submitted that, in the context of pandemic due to corona virus, the office of the Registrar General of India (ORGI) had issued directions/guidelines to the Chief Registrars of all States/UTs during April, 2020 to collect and certify the information on cause of death due to COVID-19 as per two emergency codes created by World Health Organization (WHO) for COVID-19 in the 10th revision of International Statistical Classification (ICD-10) of Diseases and Related Health Problems. It is submitted that recently in May, 2021, ORGI has also issued guidelines regarding registration of death and recording the cause of death wherein it has been advised that the death of a person should be registered within the stipulated time of 21 days.

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6.20.5 So far as the guidelines regarding death audit and death certification, it is submitted that the MoHFW vide its letter dated 09.10.2020 has released guidelines on distinction between 'Death Audit' and 'Death Certification'.

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- A It is submitted that ‘Death Certification’ is required to be done for recording deaths in accordance with the regulations prescribed by the Registrar General of India. The primary goal of certification of cause of death (Death Certificate) is to identify and correctly classify all deaths due to a medical condition (e.g., COVID-19) and to eliminate any discrepancy in coding so as to obtain true estimates of burden of COVID-19 deaths. All deaths with a diagnosis of COVID-19, irrespective of comorbidities, are to be classified as deaths due to COVID-19. It is submitted that the only exception could be where there is a clear alternative cause of death, 47 that cannot be attributed to COVID-19 (e.g., accidental trauma, poisoning, acute myocardial infarction, etc),
- B where COVID-19 is an incidental finding. 49. Whereas, ‘Death Audit’ on the other hand is an administrative exercise to identify gaps that contribute to deaths of patients. The aim is to improve quality of healthcare services by suitable corrective measures to prevent/minimize future deaths. It is submitted that the same is to be done as per the indicative proforma.
- C 6.21 Shri Tushar Mehta, learned Solicitor General appearing on behalf of the Union of India has vehemently submitted that while interpreting Section 12 of the DMA 2005, the term “shall” must be cohered as “may”, thereby making the provision directory/discretionary and not mandatory, in the light of peculiar facts and comprehensive steps taken by the Union of India. It is submitted that this Court in a catena of judgments on the interplay between “may”, “shall” and “must”, have seldom held the phrases to their literary interpretation, but instead looked into the intent of the legislature against the backdrop of the prevailing circumstances. Heavy reliance is placed on the decision of this Court in
- D the case of *Bachahan Devi v. Nagar Nigam, Gorakhpur, (2008) 12 SCC 372.*
- E 7. Having heard the learned counsel for the respective petitioners/intervenors and the reliefs sought in the respective petitions, the reliefs/submissions on behalf of the petitioners/intervenors can be summarized as under:
- F i) to direct the National Disaster Management Authority (NDMA)/ Central Government/State Governments to provide ex gratia monetary compensation of Rs. 4 lacs or notified ex gratia monetary compensation to the families of the deceased persons who have succumbed to the
- G pandemic of Covid-19, in view of Section 12 of DMA 2005;

ii) to direct the respondents/State Governments to fulfill their obligation(s) to take care of victims of the calamity and their family members; A

iii) to issue an appropriate direction to the respondents – State Governments to issue any official document stating cause of death, to the family members of the deceased who died due to Covid-19; and B

iv) to direct the respondents – Union of India and others to provide social security and rehabilitation to the victims of Covid-19.

7.1 While considering the aforesaid submissions/reliefs sought, the scope of judicial review on the policy decisions having financial implications which might affect the economy of the country and which may also affect the other priorities and which may affect the Government's other schemes declared to achieve the object and purpose of enactment of DMA 2005 are required to be considered. C

7.2 An identical question came to be considered by this Court in the recent decision in Writ Petition (C) No. 476 of 2020 (Small Scale Industrial Manufacturers Association (Regd.) v. Union of India and others), decided on 23.03.2021 (2021 (4) SCALE 415), and this Court had an occasion to consider in detail the scope of judicial review. While considering the other decisions of this Court on the limited scope of judicial review, in paragraphs 14 to 20, this Court has observed and held as under: D E

14. In catena of decisions and time and again this Court has considered the limited scope of judicial review in economic policy matters. From various decisions of this Court, this Court has consistently observed and held as under: F

i) The Court will not debate academic matters or concern itself with intricacies of trade and commerce;

ii) It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Wisdom and advisability of economic policy are ordinarily not amenable to judicial review; G H

- A iii) Economic and fiscal regulatory measures are a field where Judges should encroach upon very warily as Judges are not experts in these matters.
- B 14.1 In *R.K. Garg v. Union of India (1981)* 4 SCC 675, it has been observed and held that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It is further observed that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this particularly true in case of legislation dealing with economic matters.
- C 14.2 In the case of *Arun Kumar Agrawal v. Union of India (2013)* 7 SCC 1, this Court had an occasion to consider the following observations made the Supreme Court of the United States in the case of *Metropolis Theatre Co. v. Chicago*, 57 L Ed 730: 228 US 61 (1913):
- D “...The problems of Government are practical ones and may justify, if they do not require, rough accommodation, illogical, if may be, and unscientific. But even such criticism should not be hastily expressed. What is the best is not always discernible; the wisdom of any choice may be disputed or condemned. Mere errors of Government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void...”
- E 14.3 This Court in the case of *State of M.P. v. Nandlal Jaiswal (1986)* 4 SCC 566 has observed that the Government, as laid down in *Permian Basin Area Rate Cases*, 20 L Ed (2d) 312, is entitled to make pragmatic adjustments which may be called for by particular circumstances. The court cannot strike down a policy decision taken by the State Government merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. The court can interfere only if the policy decision is patently arbitrary, discriminatory or mala fide.
- F 14.4 In the case of *BALCO Employees' Union (Regd.) v. Union of India (2002)* 2 SCC 333, this Court has observed that Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other
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words, it is not for the courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved.

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It is further observed that in the case of a policy decision on economic matters, the courts should be very circumspect in conducting an enquiry or investigation and must be more reluctant to impugn the judgment of the experts who may have arrived at a conclusion unless the court is satisfied that there is illegality in the decision itself.

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14.5 In the case of *Peerless General Finance and Investment Co. Ltd. v. RBI*, (1992) 2 SCC 343, it is observed and held by this Court that the function of the Court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is further observed that a public body invested with statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. Courts are not to interfere with economic policy which is the function of experts. It is not the function of the courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. In such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts.

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It is further observed that it is not the function of the Court to amend and lay down some other directions. The function of the court is not to advise in matters relating to financial and economic policies for which bodies like RBI are fully competent. The court can only strike down some or entire directions issued by the RBI in case the court is satisfied that the directions were wholly unreasonable or in violative of any provisions of the Constitution or any statute. It would be hazardous and risky for the courts to tread an unknown path and should leave such task to the expert bodies. This Court has repeatedly said that matters of economic policy ought to be left to the government.

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14.6 In the case of *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664, in paras 229 & 233, it is observed and held as under:

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- A “229. It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the courts are ill- equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people’s fundamental rights are not transgressed upon except to the extent permissible under the Constitution.
- B 233. At the same time, in exercise of its enormous power the court should not be called upon to or undertake governmental duties or functions. The courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the Constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and the rights of Indians. The courts must, therefore, act within their judicial permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the court will not interfere. When there is a valid law requiring the Government to act in a particular manner the court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words, the court itself is not above the law.”
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- F 14.7 In *Prag Ice & Oil Mills v. Union of India*, AIR 1978 SC 1296, this Court observed as under:
- G “We do not think that it is the function of the Court to set in judgment over such matters of economic policy as must necessarily be left to the government of the day to decide. Many of them are matters of prediction of ultimate results on which even experts can seriously err and doubtlessly differ. Courts can certainly not be expected to decide them without even the aid of experts.”
- H 14.8 In *P.T.R Exports (Madras) P. Ltd. v. Union of India*, (1996) 5 SCC 268, this Court observed as under:
- “In matters of economic policy, it is settled law that the Court gives a large leeway to the executive and the legislature

Government would take diverse factors for formulating the policy in the overall larger interest of the economy of the country. The Court therefore would prefer to allow free play to the Government to evolve fiscal policy in the public interest and to act upon the same.”

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15. What is best in the national economy and in what manner and to what extent the financial reliefs/packages be formulated, offered and implemented is ultimately to be decided by the Government and RBI on the aid and advise of the experts. The same is a matter for decision exclusively within the province of the Central Government. Such matters do not ordinarily attract the power of judicial review. Merely because some class/sector may not be agreeable and/or satisfied with such packages/policy decisions, the courts, in exercise of the power of judicial review, do not ordinarily interfere with the policy decisions, unless such policy could be faulted on the ground of mala fide, arbitrariness, unfairness etc.

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16. There are matters regarding which Judges and the Lawyers of the courts can hardly be expected to have much knowledge by reasons of their training and expertise. Economic and fiscal regulatory measures are a field where Judges should encroach upon very warily as Judges are not experts in these matters.

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17. The correctness of the reasons which prompted the government in decision taking one course of action instead of another is not a matter of concern in judicial review and the court is not the appropriate forum for such investigation. The policy decision must be left to the government as it alone can adopt which policy should be adopted after considering of the points from different angles. In assessing the propriety of the decision of the Government the court cannot interfere even if a second view is possible from that of the government.

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18. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review. The scope of judicial review of the governmental policy is now well defined. The courts do not and cannot act as an appellate authority examining the correctness, stability and appropriateness of a policy, nor are the courts advisers to the executives on matters of policy which the executives are entitled to formulate.

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- A 19. Government has to decide its own priorities and relief to the different sectors. It cannot be disputed that pandemic affected the entire country and barring few of the sectors. However, at the same time, the Government is required to take various measures in different fields/sectors like public health, employment, providing food and shelter to the common people/migrants, transportation of migrants etc. and therefore, as such, the government has announced various financial packages/reliefs. Even the government also suffered due to lockdown, due to unprecedented covid-19 pandemic and also even lost the revenue in the form of GST. Still, the Government seems to have come out with various reliefs/packages. Government has its own financial constraints. Therefore, as such, no writ of mandamus can be issued directing the Government/RBI to announce/declare particular relief packages and/or to declare a particular policy, more particularly when many complex issues will arise in the field of economy and what will be the overall effect on the economy of the country for which the courts do not have any expertise and which shall be left to the Government and the RBI to announce the relief packages/ economic policy in the form of reliefs on the basis of the advice of the experts. Therefore, no writ of mandamus can be issued.
- E 20. No State or country can have unlimited resources to spend on any of its projects. That is why it only announces the financial reliefs/packages to the extent it is feasible. The court would not interfere with any opinion formed by the Government if it is based on the relevant facts and circumstances or based on expert advice. It is not normally within the domain of any court to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning, only where it is arbitrary and violative of any Constitutional, statutory or any other provisions of law. When Government forms its policy, it is based on a number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits.”
- H 7.3 However, at the same time, if the statutory authority/authority has failed to perform its statutory duty cast under the statute or

constitutional duty, a mandamus can be issued directing the authority to perform its duty cast under the statute. In such a situation, the Court would be absolutely justified in issuing a writ of mandamus directing the authority to perform its statutory duty/constitutional duty.

8. The reliefs sought in the present petitions are required to be considered in the light of the observations made hereinabove on the scope of judicial review.

While praying for *ex gratia* compensation of Rs. 4 lacs to the family members of the persons who have died due to Covid-19, heavy reliance is placed on Section 12 of DMA 2005 and the earlier decision contained in the letter dated 8.4.2015, by which it was provided to pay Rs. 4 lacs by way of *ex gratia* to the kin/family members of the persons who died due to disaster, to be paid from SDRF and NDRF. Section 12 of DMA 2005, which has been heavily relied upon, reads as under:

12. Guidelines for minimum standards of relief. —The National Authority shall recommend guidelines for the minimum standards of relief to be provided to persons affected by disaster, which shall include,—

- (i) the minimum requirements to be provided in the relief camps in relation to shelter, food, drinking water, medical cover and sanitation;
- (ii) the special provisions to be made for widows and orphans;
- (iii) *ex gratia* assistance on account of loss of life as also assistance on account of damage to houses and for restoration of means of livelihood;
- (iv) such other relief as may be necessary.

8.1 It is the case on behalf of the respective petitioners that as mandated by Section 12 of DMA 2005, the National Authority shall have to recommend guidelines for the minimum standards of relief to be provided to persons affected by disaster, which shall include *ex gratia* assistance on account of loss of life... [Section 12(iii)].

8.2 On the other hand, it is the case on behalf of the Union of India that the word “shall” used in Section 12 may be read as “may” and it should be read as directory/discretionary and shall not be construed as “mandatory”. It is also the case on behalf of the Union of India that as such by providing various schemes and by taking various steps the

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- A Government has already made a provision/provided the minimum standards of relief by making provision from NDRF/SDRF, which can be said to be reliefs under Section 12 of DMA 2005. It is also the case on behalf of the Union of India that it is not the question of financial inability, but the question is to give priorities to other sectors/fields/reliefs,
- B while taking other measures to deal with the disaster or the mitigation or preparedness and capacity building for dealing with the threatening disaster situation. It is the case on behalf of the Union of India that instead of giving ex gratia compensation of Rs. 4 lacs to the family members of the deceased of the persons who have died due to Covid-19, a conscious decision has been taken by the Finance Commission
- C and/or Union of India to make provision and/or use the fund from NDRF/ SDRF for the purpose of creating infrastructure, hospitals, testing, vaccination, ICU facilities and other allied matters including providing food to the BPL/migrant labourers, and not to pay ex gratia assistance.
 - 9. While appreciating the submission on behalf of the Union of
- D India that the word “shall” used in Section 12 of DMA 2005 may be read as “may” and the same shall not be construed as “mandatory” and may be considered as “directory/discretionary”, the object and purpose of enactment of Disaster Management Act, 2005 and the relevant provisions of DMA 2005 are required to be referred to and considered.
- E 9.1 The Disaster Management Act, 2005 has been enacted for prevention and mitigation effects of disasters and for undertaking a holistic, coordinated and prompt response to any disaster situation. It has been enacted on disaster management to provide for requisite institutional mechanisms for drawing up and monitoring the implementation of the disaster management plans, ensuring measures by various wings of
- F Government. With the above aim and object, DMA 2005 has been enacted.
- G 9.2 The DMA 2005 provides for setting up of a National Disaster Management Authority under the Chairmanship of Hon’ble Prime Minister. It also provides for constitution of State Disaster Management Authorities under the Chairmanship of Chief Ministers and District Disaster Management Authorities under the Chairmanship of District Magistrates. It also provides for concerned Ministries or Departments to draw up department-wise plans in accordance with the national disaster management plan. It also provides for constitution of a National Disaster Response Force and setting up the National Institute of Disaster

Management. It also further provides for the constitution of the National Fund for Disaster Response and the National Fund for Disaster Mitigation and similar funds at the State and District levels. The National Authority has been constituted under Section 3 of DMA 2005. Section 6 provides for power and functions of National Authority, which reads as under:

6. Powers and functions of National Authority. — (1) Subject to the provisions of this Act, the National Authority shall have the responsibility for laying down the policies, plans and guidelines for disaster management for ensuring timely and effective response to disaster.

(2) Without prejudice to generality of the provisions contained in sub-section (1), the National Authority may—

- (a) lay down policies on disaster management;
- (b) approve the National Plan;
- (c) approve plans prepared by the Ministries or Departments of the Government of India in accordance with the National Plan;
- (d) lay down guidelines to be followed by the State Authorities in drawing up the State Plan;
- (e) lay down guidelines to be followed by the different Ministries or Departments of the Government of India for the purpose of integrating the measures for prevention of disaster or the mitigation of its effects in their development plans and projects;
- (f) coordinate the enforcement and implementation of the policy and plan for disaster management;
- (g) recommend provision of funds for the purpose of mitigation;
- (h) provide such support to other countries affected by major disasters as may be determined by the Central Government;
- (i) take such other measures for the prevention of disaster, or the mitigation, or preparedness and capacity building for dealing with the threatening disaster situation or disaster as it may consider necessary;
- (j) lay down broad policies and guidelines for the functioning of the National Institute of Disaster Management;

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- A (3) The Chairperson of the National Authority shall, in the case of emergency, have power to exercise all or any of the powers of the National Authority but exercise of such powers shall be subject to ex post facto ratification by the National Authority.
- 9.3 Section 7 of the Act provides for constitution of advisory committee by National Authority which shall consist of experts in the field of disaster management and having practical experience of disaster management at the national, State or district level to make recommendations on different aspects of disaster management. Section 8 of the Act provides for constitution of National Executive Committee to assist the National Authority in the performance of its functions under the Act. Section 10 provides for powers and functions of National Executive Committee and the National Executive Committee shall assist the National Authority in the discharge of its functions and have the responsibility for implementing the policies and plans of the National Authority and ensure the compliance of directions issued by the Central Government for the purpose of disaster management in the country. Section 10 of DMA 2005 reads as under:

- “10. Powers and functions of National Executive Committee.—**(1) The National Executive Committee shall assist the National Authority in the discharge of its functions and have the responsibility for implementing the policies and plans of the National Authority and ensure the compliance of directions issued by the Central Government for the purpose of disaster management in the country.
- (2) Without prejudice to the generality of the provisions contained in sub-section (1), the National Executive Committee may—
- (a) act as the coordinating and monitoring body for disaster management;
- (b) prepare the National Plan to be approved by the National Authority;
- (c) coordinate and monitor the implementation of the National Policy;
- (d) lay down guidelines for preparing disaster management plans by different Ministries or Departments of the Government of India and the State Authorities;

- (e) provide necessary technical assistance to the State Governments and the State Authorities for preparing their disaster management plans in accordance with the guidelines laid down by the National Authority; A
- (f) monitor the implementation of the National Plan and the plans prepared by the Ministries or Departments of the Government of India; B
- (g) monitor the implementation of the guidelines laid down by the National Authority for integrating of measures for prevention of disasters and mitigation by the Ministries or Departments in their development plans and projects; C
- (h) monitor, coordinate and give directions regarding the mitigation and preparedness measures to be taken by different Ministries or Departments and agencies of the Government; D
- (i) evaluate the preparedness at all governmental levels for the purpose of responding to any threatening disaster situation or disaster and give directions, where necessary, for enhancing such preparedness; E
- (j) plan and coordinate specialised training programme for disaster management for different levels of officers, employees and voluntary rescue workers; F
- (k) coordinate response in the event of any threatening disaster situation or disaster; G
- (l) lay down guidelines for, or give directions to, the concerned Ministries or Departments of the Government of India, the State Governments and the State Authorities regarding measures to be taken by them in response to any threatening disaster situation or disaster; H
- (m) require any department or agency of the Government to make available to the Na material resources as are available with it for the purposes of emergency response, rescue and relief;
- (n) advise, assist and coordinate the activities of the Ministries or Departments of the Government of India, State

- A Authorities, statutory bodies, other governmental or non-governmental organisations and others engaged in disaster management;
- (o) provide necessary technical assistance or give advice to the State Authorities and District Authorities for carrying out their functions under this Act;
- B (p) promote general education and awareness in relation to disaster management; and
- (q) perform such other functions as the National Authority may require it to perform.”
- C 9.4 Section 12 provides for the National Authority to recommend guidelines for the minimum standards of relief to be provided to persons affected by disaster, and which shall include (iii) **ex gratia assistance on account of loss of life as also assistance on account of damage to houses and for restoration of means of livelihood.** Section 12
- D reads as under:
 - 12. Guidelines for minimum standards of relief.** —The National Authority shall recommend guidelines for the minimum standards of relief to be provided to persons affected by disaster, which shall include,—
- E (i) the minimum requirements to be provided in the relief camps in relation to shelter, food, drinking water, medical cover and sanitation;
- (ii) the special provisions to be made for widows and orphans;
- (iii) *ex gratia* assistance on account of loss of life as also assistance on account of damage to houses and for restoration of means of livelihood;
- (iv) such other relief as may be necessary.
- G 9.5 Section 19 provides for similar guidelines for minimum standards of relief by the State Authority. As per Section 46, the Central Government has to constitute a fund to be called the National Disaster Response Fund (NDRF) for meeting any threatening disaster situation or disaster. As per sub-section 2 of Section 46, the NDRF shall be made available to the National Executive Committee to be applied towards meeting the expenses for emergency response, relief and rehabilitation in accordance with the guidelines laid down by the Central Government in consultation
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with the National Authority. Over and above the NDRF, the Central Government may also constitute a fund to be called the National Disaster Mitigation Fund for projects exclusively for the purpose of mitigation. A similar disaster response fund is to be constituted by the State Authority, which is known as State Disaster Response Fund (SDRF); District Disaster Response Fund; State Disaster Mitigation Fund and District Disaster Mitigation Fund as per Section 48 of DMA 2005.

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9.6 “Disaster: as defined under Section 2(d) of DMA 2005 means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or manmade causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area.

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“Disaster Management” is also defined under Section 2(e) of DMA 2005, which reads as under:

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(e) “disaster management” means a continuous and integrated process of planning, organising, coordinating and implementing measures which are necessary or expedient for—

- (i) prevention of danger or threat of any disaster;
- (ii) mitigation or reduction of risk of any disaster or its severity or consequences;
- (iii) capacity-building;
- (iv) preparedness to deal with any disaster;
- (v) prompt response to any threatening disaster situation or disaster;
- (vi) assessing the severity or magnitude of effects of any disaster;
- (vii) evacuation, rescue and relief;
- (viii) rehabilitation and reconstruction

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As per Section 2(i), “mitigation” means measures aimed at reducing the risk, impact or effects of a disaster or threatening disaster situation. As per Section 2(m) “preparedness” means the state of readiness to deal with a threatening disaster situation or disaster and the effects thereof.

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- A 10. Considering the Statement of Objects and Reasons for enactment of DMA 2005 and the relevant provisions of the DMA 2005, referred to hereinabove, it is to be considered whether the word “**shall**” used in Section 12 is required to be interpreted and considered as “**shall**” or “**may**” and whether it is “**mandatory**” or “**directory/discretionary**”
- B for the National Authority to recommend guidelines for the minimum standards of relief to be provided to persons affected by disasters including ex gratia assistance on account of loss of life.
- 10.1 In Section 12 of DMA 2005, the word “**shall**” is used twice. The intent of the legislature by using the word “**shall**” twice is very clear and the same can be in tune with the Statement of Objects and Reasons for enactment of DMA 2005 and the functions and powers of the National Authority. One of the Objects and Purposes is “**mitigation**”. As per Section 6(1) and Sub-section 2(g) of Section 6, the National Authority shall have the responsibility for laying down the policies, plans and guidelines for disaster management and recommend provision of funds for the purpose of mitigation. Section 12 specifically provides that the National Authority “**shall**” recommend guidelines for the **minimum standards of relief** to be provided to persons affected by disaster, which “**shall**” include, (i) the minimum requirements to be provided in the relief camps in relation to shelter, food, drinking water, medical cover and sanitation; (ii) the special provisions to be made for widows and orphans; and (iii) **ex gratia assistance on account of loss of life as also assistance on account of damage to houses and for restoration of means of livelihood**. Therefore, it is the statutory duty cast upon the National Authority to recommend guidelines for the minimum standards of relief to be provided to persons affected by disaster, which shall include the reliefs, as stated hereinabove. The language used in the provision is very plain and unambiguous. As per the settled proposition of law laid down by this Court in a catena of decisions, when the language of the provision is plain and unambiguous, statutory enactments must ordinarily be construed according to its plain meaning. The beneficial provision of the legislation must be literally construed so as to fulfil the statutory purpose and not to frustrate it. (See *Bhavnagar University (supra)* (para 26)).
- 10.2 Under Section 12 of DMA 2005, the National Authority is mandated to recommend guidelines for the minimum standards of relief. Minimum standards of relief are, as such, not defined under the Act.
- H Then what is somewhat intended by the legislature while providing

minimum standards of relief is to be gathered from Section 12 itself. Ex gratia assistance on account of loss of life as also assistance on account of damage to houses and for restoration of means of livelihood therefore can be said to be part of minimum standards of relief of which the National Authority is required to recommend guidelines.

10.3 As observed by this Court in the case of *Bachahan Devi (supra)*, even to interpret the legal import of the word “may”, the Court has to consider various factors, namely, the object and the scheme of the Act, the context and the background against which the words have been used, the purpose and the advantages sought to be achieved by the use of this word, and the like. In paragraph 18, it is observed and held as under:

“**18.** It is well settled that the use of the word “may” in a statutory provision would not by itself show that the provision is directory in nature. In some cases, the legislature may use the word “may” as a matter of pure conventional courtesy and yet intend a mandatory force. In order, therefore, to interpret the legal import of the word “may”, the court has to consider various factors, namely, the object and the scheme of the Act, the context and the background against which the words have been used, the purpose and the advantages sought to be achieved by the use of this word, and the like. It is equally well settled that where the word “may” involves a discretion coupled with an obligation or where it confers a positive benefit to a general class of subjects in a utility Act, or where the court advances a remedy and suppresses the mischief, or where giving the words directory significance would defeat the very object of the Act, the word “may” should be interpreted to convey a mandatory force. As a general rule, the word “may” is permissive and operative to confer discretion and especially so, where it is used in juxtaposition to the word “shall”, which ordinarily is imperative as it imposes a duty. Cases, however, are not wanting where the words “may”, “shall” and “must” are used interchangeably. In order to find out whether these words are being used in a directory or in a mandatory sense, the intent of the legislature should be looked into along with the pertinent circumstances.”

10.4 Therefore, to construe the word “**shall**” as “**may**” and as directory/discretionary, the very object and purpose of the Act will be defeated. The word “**shall**” used twice in Section 12 significantly imposes

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- A a duty cast upon the National Authority to issue guidelines for the minimum standards of relief which shall include ex gratia assistance on account of loss of life as also assistance on account of damage to houses and for restoration of means of livelihood. Nothing is on record that any guidelines/decision has been taken by the National Authority
 - B recommending guidelines for the minimum standards of relief in the form of ex gratia assistance on account of loss of life of a person who has died due to Covid-19. At this stage, it is required to be noted and it is not in dispute and cannot be disputed that Covid-19 pandemic is a disaster within the meaning of Section 2(d) of DMA 2005. Not only that even in the letter dated 14.03.2020, the Central Government has declared Covid-19 pandemic as “notified disaster”. Even, all other steps including the guidelines and SOPs are issued under the provisions of DMA 2005. Therefore, once the Covid-19 pandemic is declared as “notified disaster”/ national disaster, even otherwise the same can be disaster within the meaning of Section 2 (d) of DMA 2005, the provisions of Section 12 of DMA 2005 shall be applicable and it has to be applied to the Covid-19
 - C pandemic which is declared as “notified disaster”/national disaster. The submission on behalf of the Union of India that considering the peculiar nature of the Covid-19 pandemic, even if Covid-19 pandemic is declared and/or considered as a disaster, Section 12 of DMA 2005 may not be applicable and/or the word “**shall**” should be construed as “**may**” as when DMA 2005 was enacted, the legislature might not have visualised that such a pandemic/disaster would occur which would have a long-time effect/impact. The aforesaid cannot be accepted for the simple reason that every disaster as defined under Section 2(d) of the Act is a disaster and once it is declared as a “notified disaster”/national disaster/ disaster, Section 12 of DMA 2005 shall be applicable and is mandatorily
 - F to be complied with, with respect to any disaster, within the meaning of Section 2(d) of DMA 2005.
- As observed hereinabove, nothing is on record that any decision/ guidelines has/have been issued by the National Authority for ex gratia assistance on account of loss of life due to Covid-19 pandemic while
- G recommending guidelines for minimum standards of relief to be provided to the persons affected by the disaster/Covid-19 pandemic. Once, it is observed as above and it is held that the word “**shall**” have to be read as “**shall**” and it is the mandatory statutory duty cast upon the National Authority to recommend guidelines for the minimum standards of relief which shall include ex gratia assistance on account of loss of life, not
 - H recommending any

Guidelines for ex gratia assistance on account of loss of life due to Covid-19 pandemic, while recommending other guidelines for the minimum standards of relief, it can be said that the National Authority has failed to perform its statutory duty cast under Section 12 and therefore a writ of mandamus is to be issued to the National Authority to recommend appropriate guidelines for ex gratia assistance on account of loss of life due to Covid-19 pandemic while recommending guidelines for the minimum standards of relief to be provided to persons affected by disaster/Covid-19 pandemic as mandatory under Section 12 of DMA 2005.

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11. Now the next question which is posed for the consideration of this Court is, what further relief the petitioners are entitled to. Whether a writ of mandamus can be issued directing the Central Government/National Authority/State Governments to pay a particular amount by way of ex gratia assistance, more particularly Rs. 4 lacs, as prayed by the petitioners? Whether the Court can/may direct to pay a particular amount by way of ex gratia assistance?

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11.1 The scope of judicial review is discussed hereinabove. It cannot also be disputed that Covid-19 pandemic is a peculiar disaster, which the country and the world has experienced in a long time. It has an extraordinary spread and impact from that of other natural disaster/disasters. Therefore, its extreme spread and impact requires an approach different from the one that is applied to other disasters/natural disasters. Other natural disasters would have a different effect/impact. Covid-19 pandemic is having an on-going impact/effect. The pandemic is still not over in the country as also the world and it is extremely difficult to predict with accuracy, it's further trajectory, mutations and waves. Looking to its peculiarity and the impact and effect, the Covid-19 pandemic is required to be viewed differently from other disasters. There is a need to focus simultaneously on prevention, preparedness, mitigation and recovery, which calls for a different order of mobilization of both financial and technical resources. The Government is required to and as so stated in the counter affidavit and as submitted by Shri Mehta, learned Solicitor General, a huge fund is required for the purpose of creating the infrastructure, hospitals, ventilators, oxygen, testing, vaccination etc. According to the Central Government, the Government has bonafidely and in the larger public interest has decided the priorities and focused simultaneously on prevention, preparedness, mitigation and recovery.

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- A According to the official figure, the pandemic has caused more than 3,85,000 deaths, the same is likely to increase further. It cannot be disputed that these deaths have affected the families from all classes – the rich and poor, professionals and informal workers, and traders and farmers. It has also affected the kins as well as elderly members, old parents.
- B Many have lost the sole bread earner. However, at the same time, and as observed hereinabove, the impact and effect of the present pandemic/disaster would be different from the other disasters/natural disasters for which ex gratia assistance is provided. There shall not be any justification to provide for the same/similar amount by way of ex gratia assistance as provided in the case of other disasters/natural disaster, i.e., Rs. 4 lacs.
- C 12. As observed hereinabove, the Government has to decide its own priorities and reliefs to the different sectors/for different reliefs. The Government is required to take various measures in different fields/sectors, like public health, employment, providing food and shelter to the common people/migrants, transportation to migrants etc. The Government
- D is also required to deal with the effect of the pandemic on the economy. As observed hereinabove, a huge amount is required to be spent from the NDRF/SDRF, even while providing minimum standards of relief. It cannot be disputed that ex gratia assistance would also have financial implications and which may affect the other minimum standards of relief to be provided to the persons affected by disaster. No State or country
- E has unlimited resources. That is why it only announces the financial reliefs/packages to the extent it is possible. When the Government forms its policy, it is based on a number of circumstances, on facts, law including constraint based governmental resources. As observed by this Court in the case of *Nandlal Jaiswal (supra)*, the Government, as laid down in
- F *Permian Basin Area Rate Cases, 20 L Ed (2d) 312*, is entitled to make pragmatic adjustments which may be called for by particular circumstances. As observed by this Court hereinabove, the function of the Court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority.
- G Therefore, the Courts would be very slow to interfere with priorities fixed by the government in providing reliefs, unless it is patently arbitrary and/or not in the larger public interest at all. The Government should be free to take policy decisions/decide priorities (of course to achieve the ultimate goal of DMA 2005, government should be free to take its own decisions/priorities while providing minimum standards of
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relief and even towards preparedness, mitigation, prevention and recovery), subject to the availability of the resources/funds and the amount to be spent towards other reliefs on the aid and advice of the experts and looking to the circumstances from time to time. Therefore, no relief can be granted to direct the National Authority/Central Government/ State Governments to pay a particular amount towards ex gratia assistance on account of loss of life to the family members of the persons who have died due to Covid-19. It should be left to the wisdom of National Authority while considering the guidelines/recommendations of the Finance Commission in its XVth Finance Commission Report and the funds required for other reliefs/priorities. The recommendations of the Finance commission provide sufficient guidelines. However, at the same time, as observed hereinabove, while recommending guidelines for the minimum standards of relief to be provided to persons affected by disaster/Covid-19 pandemic, the authority has to consider issuing/recommend guidelines on ex gratia assistance on account of loss of life. As observed hereinabove, ex-gratia assistance on account of loss of life is part of minimum standards of relief, which must be considered by the National Authority while providing for the minimum standards of relief to be provided to the persons affected by disaster – in the present case Covid-19 pandemic.

12.1 At this stage, it is required to be noted and it is reported that some States are paying ex gratia assistance to the family members of the persons who have died due to Covid-19 pandemic, like State of Bihar paying Rs. 4 lacs, Karnataka paying Rs. 1 lac and Delhi paying Rs. 50,000/- . However, it is to be noted that the same is paid from the Chief Minister Relief Fund or other relief funds, but not from SDRF. To avoid any heart-burning and discriminatory treatment, it would be appropriate for the National Authority to recommend uniform guidelines while providing for the minimum standards of relief in the form of ex gratia assistance on account of loss of life, as mandated under Section 12 of the Act. However, at the same time, it will always be open for the concerned States to provide for ex gratia assistance on account of loss of life and other reliefs from their own relief funds (other than SDRF) as it would be a policy decision by the concerned States and they may provide such other relief/reliefs, looking to the availability of the fund. However, merely because some States might have been paying the ex gratia assistance on account of loss of life to the family members of the persons who have died due to Covid-19 pandemic, for the reasons stated

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- A hereinabove, no writ of mandamus can be issued directing the Central Government/State Governments to pay a particular sum/amount by way of ex gratia assistance as the utilization of the fund/money by the Central Government would depend upon the priorities fixed by them which includes the money/fund to be used for prevention, preparedness, mitigation, recovery etc. Therefore, what amount to be paid by way of ex gratia assistance to the family members of the persons who died due to Covid-19 pandemic should be left to the National Authority/Central Government.
- B 13. Now so far as the prayer to issue appropriate direction to the respondents – State Governments to issue an official document stating Covid-19 related as cause of death, to the family members of the deceased who died due to Covid-19 is concerned, it is required to be noted that it is the duty of the every authority to issue accurate/correct death certificates stating the correct and accurate cause of death, so that the family members of the deceased who died due to Covid-19 may not face any difficulty in getting the benefits of the schemes that may be declared by the Government for the death of the deceased, who died due to Covid-19. In the death certificate also, if a person has died due to Covid-19 and/or any other complications/disease due to Covid-19, it should be specifically mentioned in the death certificate.
- C E We have gone through the counter affidavit filed on behalf of the Union Government on the aforesaid and the guidelines issued by the ICMR as well as the format and the guidelines issued to the Registering Authorities of the concerned State Governments. However, we feel that the procedure should be as simplified as it can be. Therefore, a simplified procedure/guidelines is/are required to be issued by the Central Government and/or appropriate authority for issuance of an official document/death certificate stating the exact cause of death, i.e., "Death due to Covid-19", to the family members of the deceased who died due to Covid-19. For guidance, such guidelines may provide if a person has died after he was found covid positive and he has died within two to three months, either in the hospital or outside the hospital or at home, the death certificate/official document must be issued to the family members of the deceased who died due to Covid-19 stating the cause of death as "Died due to Covid-19". He/she might have died even due to other complications, however, due to Covid-19. In the guidelines, it may also be provided that if the family member(s) of the deceased who died due
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to Covid-19 has/have any grievance that in the death certificate/official document the correct/exact cause of death is not mentioned, he/she must be provided with some remedy to approach the appropriate authority to get the death certificate/official document corrected.

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14. Now so far as the prayer to issue an appropriate direction directing the respondents – State Governments to fulfil their obligation to take care of the victims of the calamity and their family members is concerned, the prayer sought is too vague. Even otherwise, considering the counter affidavit filed on behalf of the Union of India it demonstrates the various reliefs declared by the Union Government. As such, no mandamus can be issued directing the respondents – State Governments to declare a particular policy/relief/relief package in general and the same shall be within the domain of policy decision and would have financial implications also.

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15. Now so far as one additional relief sought in Writ Petition (Civil) No. 539 of 2021 to issue appropriate direction directing the respondents – Union of India and others to provide social security in the form of insurance is concerned, from the XVth Finance Commission Report, it appears that the Finance Commission in its report has already made recommendations of the same and from the counter affidavit it appears that the Union Government has actively considering the same in consultation with other stakeholders. We hope and trust that the Union Government will consider the recommendations made by the Finance Commission made in its XVth Finance Commission Report and take an appropriate decision in consultation with other stakeholders and the experts.

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Even otherwise, from the counter affidavit filed on behalf of the Union of India, it appears that the Central Government has already launched the Pradhan Mantri Garib Kalyan Package under which a comprehensive personal accident cover of Rs. 50 lakhs have been provided to 22.12 lakh health care providers throughout the country, including community health workers and private health workers who may have been in direct contact and care of Covid-19 patients and may be at risk of being impacted/infected by this. It is further reported that on account of unprecedented situation, private hospital staff/retired/volunteer/local urban bodies/contract/daily wage/ad-hoc/outsourced staff requisitioned by States/Central Hospitals/autonomous hospitals of Central/States/Union Territories, AIIMS & Institute of National Importance (INI)/

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- A hospitals of Central Ministries specifically drafted for care of Covid-19 patients are also covered under the scheme. The benefits under the said scheme have been extended for a further period of 180 days with effect from 24.04.2021. Therefore, it appears that sufficient care has been taken. However, some class might have been left out, like those persons
- B working at premortem. Thus, the Union Government may look into the same and cover them also who might have been left out and who can be said to be in direct contact of dead bodies of Covid-19 patients. Even, Shri Tushar Mehta, learned Solicitor General has also stated at the Bar that the Union Government/appropriate authority shall look into the same.
- C 16. In view of the above and for the reasons stated above, we dispose of the present writ petitions with the following directions:
- D 1) We direct the National Disaster Management Authority to recommend guidelines for ex gratia assistance on account of loss of life to the family members of the persons who died due to Covid-19, as mandated under Section 12(iii) of DMA 2005 for the minimum standards of relief to be provided to the persons affected by disaster – Covid 19 Pandemic, over and above the guidelines already recommended for the minimum standards of relief to be provided to persons affected by Covid-19. However, what reasonable amount to be offered towards ex gratia assistance is left to the wisdom of National Authority which may consider determining the amount taking into consideration the observations made hereinabove, such as, requirement/availability of the fund under the NDRF/SDRF for other reliefs and the priorities determined by the National Authority/Union Government and the fund required for other minimum standards of relief and fund required for prevention, preparedness, mitigation and recovery and other reliefs to carry out the obligation under DMA 2005. The aforesaid exercise and appropriate guidelines be recommended, as directed hereinabove, within a period of six weeks from today;
- E 2) The Appropriate Authority is directed to issue simplified guidelines for issuance of Death Certificates/official document stating the exact cause of death, i.e., “Death due to Covid-19”, to the family members of the deceased who
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died due to Covid-19. While issuing such guidelines, the observations made hereinabove in paragraph 13 be borne in mind. Such guidelines may also provide the remedy to the family members of the deceased who died due to Covid-19 for correction of the death certificate/official document issued by the appropriate authority, if they are not satisfied with the cause of death mentioned in the death certificate/ official document issued by the appropriate authority; and

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- 3) The Union of India to take appropriate steps on the recommendations made by the Finance Commission in its XVth Finance Commission Report bearing in mind paragraph 8.131 in consultation with other stakeholders and experts.

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17. As a sequel to the above, all pending interlocutory applications also stand disposed of.

Devika Gujral

Writ Petitions disposed of.