

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(1) **CWP No. 7354 of 2020**
Kuldip Singh Pardesi **.....Petitioner**

Versus

Union of India and others **....Respondents**

(2) **CWP No. 7544 of 2020**
Navjeet Singh and another **.....Petitioners**

Versus

Union of India and others **....Respondents**

(3) **CWP No. 7674 of 2020**
Karamjit Singh **.....Petitioners**

Versus

Union of India and others **....Respondents**

(4) **CWP No. 8025 of 2020**
Sunil Kumar **.....Petitioners**

Versus

Union of India and others **....Respondents**

(5) **CWP No. 8392 of 2020**
Indu Bala **.....Petitioner**

Versus

Union of India and others **....Respondents**

(6) **CWP No. 8355 of 2020**
Robin Gupta **.....Petitioners**

Versus

Union of India and others **....Respondents**

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- (7)

CWP No. 9549 of 2020

Sandeep Kumar

.....Petitioners

Versus

Union of India and others

....Respondents
- (8)

CWP No. 8244 of 2020

Sachi Sanwaria

.....Petitioner

Versus

Union of India and another

....Respondents
- (9)

CWP No. 9587 of 2020

Bajrang Lal Kedia

.....Petitioner

Versus

Union of India and another

....Respondents
- (10)

CWP No. 10371 of 2020

Kamal Kishor

.....Petitioner

Versus

Union of India and others

....Respondents
- (11)

CWP No. 8610 of 2020

Keshav Sharma

.....Petitioner

Versus

Union of India and others

....Respondents
- (12)

CWP No. 11546 of 2020

Charan Singh

.....Petitioner

Versus

Union of India and others

....Respondents

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(13)	CWP No. 11351 of 2020
Aruna	Petitioner
Versus	
Union of India and others	Respondents
(14)	CWP No. 8601 of 2020
Jagdeep Kumar Sharma	Petitioner
Versus	
Union of India and others	Respondents
(15)	CWP No. 10312 of 2020
Bal Krishan	Petitioner
Versus	
Union of India and others	Respondents
(16)	CWP No. 9019 of 2020
Dev Rani	Petitioner
Versus	
Union of India and others	Respondents
(17)	CWP No. 12382 of 2020
Sanjay	Petitioner
Versus	
Union of India and others	Respondents
(18)	CWP No. 12425 of 2020
Shamsher Singh	Petitioner
Versus	
Union of India and others	Respondents

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(19)

CWP No. 10364 of 2020

Ajay Kumar

.....Petitioner

Versus

Union of India and others

....Respondents

(20)

CWP No. 12393 of 2020

Sewa Singh

.....Petitioner

Versus

Union of India and others

....Respondents

(21)

CWP No. 9660 of 2020

Raj Kumar

.....Petitioner

Versus

Union of India and others

....Respondents

(22)

CWP No. 8430 of 2020

M/s Nirogi Medical Store

.....Petitioner

Versus

Union of India and others

....Respondents

(23)

CWP No. 8699 of 2020

Raj Kumar

.....Petitioner

Versus

Union Territory Chandigarh and others

....Respondents

(24)

CWP No. 11439 of 2020

Harsh

.....Petitioner

Versus

Union Territory Chandigarh and others

....Respondents

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(25)

CWP No. 12255 of 2020

M/s Shiv Medicoce

.....Petitioner

Versus

Union of India and others

....Respondents

(26)

CWP No. 12620 of 2020

M/s Goyal Brothers

.....Petitioner

Versus

Union of India and others

....Respondents

Date of Decision: 03.09.2020

(Through Video Conferencing)

**CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. Sunil Chadha, Sr. Advocate with
Mr. Rahul Bhargava, Advocate and
Mr. Akshay Chadha, Advocate
for the petitioners in CWP Nos.7354 and 7544 of 2020.

Mr. Arun Bansal, Advocate with
Mr. Anubhav Bansal, Advocate for the petitioners
in CWP Nos.8430, 12255 and 12620 of 2020.

Mr. G.C. Shahpuri, Advocate for the petitioner
in CWP No.8392 of 2020.

Mr. Aman Joon, Advocate for the petitioner
in CWP No.9587 of 2020.

Mr. Rahul Sharma, Advocate for the petitioners
in CWP Nos.7674, 8025, 9549, 10371, 8699, 11439,
10312, 12382, 12425, 10364, 12393 and 9660 of 2020.

Mr. Chetan Bansal, Advocate
for the petitioner in CWP Nos.9019, 8355, 8610, 11546, 9019,
11351, 8601 of 2020.

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Mr. Rajiv Kataria, Advocate
for the petitioner in CWP No.8244 of 2020.

Mr. Satya Pal Jain, Addl. Solicitor General of India with
Mr. Dheeraj Jain, Senior Panel Counsel for the respondents.

Mr. Anil Mehta, Addl. Standing Counsel
for UT Chandigarh in CWP Nos.8430 8699, 11439 and
12620 of 2020.

Daya Chaudhary, J.

Petitioners have approached this Court by way of filing various writ petitions having grievance more or less the same. Some of the petitioners have been allotted chemist shops in Post Graduate Institute of Medical Education and Research, Chandigarh (hereinafter called as 'PGIMER') and some have been allotted in GMCH, Sector-32 Chandigarh. The said shops were leased out with certain terms and conditions. As per averments made in those writ petitions, the petitioners had been paying monthly installments within the prescribed period but subsequently due to Pandemic COVID-19, they were not in a position to open their shops either due to complete lockdown or partial lockdown. It is also their grievance that due to fall in number of patients/attendants, there was either no sale or the sale was on the lowest level. The petitioners were not getting any return but had to pay installments of huge amount due to which, the delay in making payment of installments has occurred. It is also their grievance that the petitioners were asked by the concerned authority to pay monthly licence fee for the period during which, the lockdown remained in force even when OPD blocks of the hospitals/institutes remained closed. The grievance of

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some of the petitioners is that they were debarred from participating in the tender process for all the commercial sites for a period of two years. In some of the cases, the site had already been vacated but still penal consequences are there due to which, the petitioners have to face not only the financial constraints but they have to pay huge amount in view of terms and conditions of the licence even after closure of shops.

The common grievances of all the petitioners are that due to Pandemic COVID-19, not only a substantial loss has been caused to them but it has become impossible and impracticable to fulfill the obligations under the licence deeds. Some of the petitioners have been served vacation notice by informing the respondents that due to fundamental change in the economic condition occurred due to Pandemic COVID-19, the licence deed between the parties has been frustrated and they are not interested in continuing with the said activity. Majority of the petitioners have approached the concerned authority for waiving off the licence fee or to divide proportionately so that they are in a position to pay the same and to go with the activity. The petitioners are feeling helpless in making monthly installments as they are not hopeful that in near future also, the situation is likely to improve.

In view of the facts as mentioned above, all the cases can be divided category wise mainly in three categories with regard to PGIMER.

In Category No.1, the licensees have not vacated the site and licences of the licensees have not been terminated. In those cases, licensees are still in possession of the commercial sites.

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In Category No.2, the licensees have vacated the site and that the contract between the parties has been frustrated. As per their submissions, they are claiming that no penal consequences should be imposed for vacating the premises.

In Category No.3, the PGIMER has terminated the licence on account of non-payment of licence fee.

In case where the licensees have not vacated the site and licences of licensees have not been terminated and still they are in possession of the commercial sites, it has been argued by learned counsel for the petitioners that COVID-19 Pandemic has been recognized as an unexpected event, due to which, the OPD blocks of PGIMER have remained closed for a longer period and a restriction has been imposed upon number of patients and their helpers in permitting to visit the hospital. It is also the argument that their monthly licence fee for the period during which, the lockdown remained in force or OPD blocks remained closed, be waived off.

In case, where licensees have vacated the sites, they are claiming that the contract between the parties stands frustrated and they have made request that no penal consequences should be imposed on the licensees for vacating the permises. In some of the cases especially, the Chemist shops in PGIMER, it was clearly mentioned in tender form by the PGIMER that approximately 10,000 patients got registered in all OPD blocks of the institute. The applicants, who participated in the tender process were attracted by this figure but due to COVID-19, the situation became otherwise.

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The cases where PGIMER has terminated the licence on account of non-payment of licence fee, the counsel representing them have argued that OPD blocks remained closed w.e.f.20.03.2020. It is also the argument that the Central Government and other Government organizations have also granted benefit of waiver of licence fee during the lockdown period and petitioners-licensees be also granted the same benefit. The termination of licences of those petitioners on account of non-payment of licence fee is also violative of principles of natural justice as well as discriminatory as licences of some of the similarly situated persons have not been terminated so far.

Mr. Sunil Chadha, learned senior counsel appearing for some of the petitioners has brought to the notice of this Court various policies of different States/Institutes/Authorities like Panjab University, Indian Railway Stations Development Corporation Limited, Municipal Corporation, Chandigarh and Ministry of Road Transports and Highways, Government of India where rent/licence fee has been waived off for a particular period when there was complete lockdown or there was some restriction on movement of the persons.

Mr. Rahul Sharma, learned counsel appearing for some of the petitioners submits that Article 14 of the Constitution of India applies to those matters of governmental policy or action of the Government even in contractual matters, fails to satisfy the test of reasonableness and the same is unconstitutional. He has also relied upon some of the judgments stating that the State or any State authority, which is state within the meaning of Article

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12 of the Constitution of India acts arbitrarily even in case of contract, the Court can interfere under Article 226 of the Constitution of India. He has also cited certain judgments to support his argument that in case, the contract becomes impossible or unlawful due to any reason or event, it becomes void when that act becomes impossible or unlawful. Learned counsel for the petitioners has also relied upon judgments rendered by Hon'ble the Apex Court in *Satyabrata Ghose vs. Mugneeram Bangur and Co., AIR 1954 SC 44*, *Sushila Devi vs. Hari Singh, 1971 (2) SCC 288*, *Union of India vs. International Trading Co., 2003(5) SCC 437* and *Shivam Coal Carriers Private Limited vs. South Eastern Coalfields Limited, 2019 SCC Online CHH 71* in support of his arguments.

Learned counsel appearing for some of the petitioners have reiterated the arguments raised by Mr. Sunil Chadha, Senior Advocate as well as Mr. Rahul Sharma, Advocate.

Mr. Satya Pal Jain, Additional Solicitor General of India appearing for UOI and other respondents has filed short reply by way of affidavit of Mr. Ankur Sharma, Administrative Officer, Estate Branch-1, PGIMER, Chandigarh and submits that the matter was discussed in the meeting of Estate Committee of PGIMER and it was sent to Government of India for direction in the matter. The Government of India vide its letter dated 06.08.2020 informed the PGIMER that it is an internal matter of PGI and decision can be taken as it may deem fit. The Estate Committee recommended and further approved by the Director, PGIMER to waive off the interest on the delayed payment of the licence fee for the months of

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April and May, 2020 in the matter of CWP No.7354 of 2020 titled as Kuldeep Singh Pardesi vs. Union of India and others.

After hearing the arguments of learned counsel for the parties and on perusal of the policy decisions of State Government/ Authorities/ University and also by considering the present situation, which has arisen due to Pandemic COVID-19, it is not disputed that it is an unexpected event due to which, there has been complete lockdown for a period from 20.03.2020 to 03.05.2020. There was complete restriction on going/coming of the persons from one place to other. The OPD blocks of the hospitals remained closed during this period. The licence deed between the parties was terminated on the ground of non-payment of lease amount and some of the licensees have vacated their shops due to frustration. It is also not disputed that Director, PGIMER is the competent authority to take appropriate decision keeping in view the facts and circumstances of the cases as well as by considering the decision taken by the other State Governments/ Authorities/ University/ Central Ministry etc. as have been pointed out by learned counsel for the petitioners.

Accordingly, we dispose of all the writ petitions bearing CWP Nos.7354, 7544, 7674, 8025, 8244, 8430, 8392, 8355, 8601, 8610, 8699, 9019, 9549, 9587, 9660, 10312, 10364, 10371,d 11351, 11439, 11546, 12255, 12382, 12393, 12425 and 12620 of 2020 with the direction to the petitioners to make representations within a period of two days from the date of receipt of certified copy of this order and thereafter, the respondents-authorities i.e. Director, PGIMER, Chandigarh and Director-Principal,

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Government Medical College and Hospital, Sector-32, Chandigarh are directed to consider and take conscious decision after taking into consideration the precedents cited by learned counsel for the parties where benefit of waiving off the licence fee has been granted/contract has been extended or any other benefit by considering the observations made by this Court within a period of 10 days after receipt of representations moved within the stipulated period.

However, in case, the petitioners are still aggrieved in any manner, they are at liberty to avail the appropriate remedy as available under law.

(DAYA CHAUDHARY)
JUDGE

03.09.2020
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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes