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

Reserved on: 11th August, 2020
Date of decision: 27th August, 2020

\+ **W.P.(C) 3505/2020**

PROF. P R RAMANUJAM ..... Petitioner

Through: Mr. Ritwik Parikh, Advocate. (M: 9999320409)

versus

VICE CHANCELLOR (IGNOU) & ANR. ..... Respondents

Through: Mr. Aly Mirza, Advocate for R-1 and 2. (M:9899720944)

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The judgment is pronounced through video-conferencing.

2. The Petitioner has filed the present petition seeking setting aside of the orders dated 21st May, 2020 and 5th June, 2020 passed by Indira Gandhi National Open University (hereinafter, *'IGNOU'*) and further seeking one month's time to vacate the residential accommodation allotted to him.

Brief Background

3. The Petitioner's case is that he is a founding member of IGNOU. He is a retired Professor and Ex-Pro-Vice Chancellor of IGNOU. He superannuated from the University on 31st August, 2019. During his tenure at IGNOU, he was allotted residential accommodation at the Asiad Village. Vide e-mail dated 4th September, 2019, the Petitioner had sought extension to retain the allotted flat, as per the House Allotment Rules, for a total period of eight months from his superannuation i.e. till 30th April, 2020.

4. On 24th April, 2020, the Petitioner again wrote to the Vice Chancellor,

IGNOU seeking a further extension beyond 30th April, 2020 for a period of six months, due to the Covid-19 lockdown. However, the Competent Authority granted, vide e-mail dated 29th April, 2020 an extension of one month to the Petitioner beyond 30th April, 2020, as a special case, on the following terms to vacate the premises:

> *"With reference to your letter dated 24.04.2020, approval is hereby conveyed for retention of flat No.181 at Asian Games Village Complex and extension for a period of one month on double of the normal licence fee beyond 30.04.2020 as a special case due to complete lockdown to non-essential services in the country.*
> *You are therefore, requested to deposit the payment as per the House Allotment Rules which is as follows:-*
> *1. Rs.1190/- per month for four months i.e. from <u>01.09.2019 to 31.12.2019((Normal Rate of Licence fee)</u>*
> *2. Rs.2380/- per month for four months i.e. from <u>01.01.2020 to 30.04.2020(Double the Normal Rate of Licence fee)</u>*
> *3. Rs.2380/- for a month i.e. from <u>01.05.2020 to 31.05.2020 (Double the Normal Rate of Licence fee).</u>*
> *This issues with the approval of the Competent Authority."*

5. Thereafter vide email dated 21st May, 2020 sent to him by the Competent Authority, the Petitioner was granted permission to retain the flat for another five months i.e. till 31st October, 2020 but on payment of 65 times of normal license fee i.e. Rs. 77,350/- per month. The said email reads as under:

> *"In continuation of our earlier communication dated 29.04.2020 thereby informing you the*

approval of the competent authority for retention of flat No.181 at Asian Games Village Complex with the extension for a period of one month to retain it on double of the normal licence fee beyond 30.04.2020 upto 31.05.2020, as a special case due to complete lockdown to non-essential services.
Since, you had originally requested for six month retention of the flat for which the permission to retain it for one month only is going to expire on 31st May, 2020, I am directed to inform you that Competent Authority has approved for retention of flat for another five months on payment of market rent @65 times of normal licence fee i.e. Rs.1190/- x 65=Rs. 77350/- per month x 5 months = Rs. 3,86,750.
You are, therefore, requested to deposit the amount as stated above for retention of flat for five months i.e. from 01.06.2020 to 31.10.2020. The receipt of the same may kindly be deposited with Gen. Admn. for records."

This is the letter which is under challenge before this Court.

6. Further communications were again issued on 29th May, 2020 and 5th June, 2020, reiterating the above stand of the University that as per the decision of the House Allotment Committee (hereinafter, *'HAC'*), retention of the flat by him beyond 31st May, 2020 would only be on payment of applicable market rent.

Submissions of Parties

7. The submission of Mr. Ritwik Parikh, ld. counsel for the Petitioner is that the Petitioner is a disabled person who is a wheelchair user and is also a diabetic patient. He submits that the rationale for which the extension was given in April, 2020 and thereafter in May, 2020 by IGNOU i.e. the lockdown situation due to the pandemic, would continue to apply till the lockdown is

lifted. Thus, according to the Petitioner, he ought to be given permission to retain the premises till 31st July, 2020 on double the license fee, on compassionate grounds and charging of 65 times the licence fees is too steep.

8. It is also submitted by him that the Petitioner has served at a very high position in IGNOU since 1986 and the extension sought for two months on double license fee, is not unreasonable considering the long tenure he had in IGNOU.

9. Mr. Aly Mirza, ld. counsel for the IGNOU however submits that the University has been extremely compassionate to the Petitioner. But it has to go by the House Allotment Rules. He submits that the University had initially granted the Petitioner four months extension at the same licence fee of Rs.1198/- per month. Additionally, for the second batch of four months by nearly paying double licence fee i.e., Rs. 2350/- per month, the Petitioner continued to retain the premises. As per the Rules, and considering his position and other factors, another extra month was given on double licence fee. The Petitioner was not satisfied even with that and now seeks extension till the end of July, 2020.

10. It is further submitted by him that the house rent after taking into consideration the total amount being paid by the Petitioner during his tenure, for the official accommodation was Rs. 53,510/-, which included House Rent Allowance @ 24% of the Basic Pay, which was Rs. 52,320/- per month (being 24 % of Basic Pay of Rs. 2,18,000/per month) + licence fee of Rs. 1190/- per month. So, the portrayal of the Petitioner that the amount is being increased 65 times is not correct. According to Mr. Aly Mirza, ld. counsel as against the monthly rent of Rs.53,510/- per month, the University is demanding Rs.77,350/- per month which is comparable market rent which the Petitioner

is bound to pay as per the rules. He further submits that as per the Government of India, Ministry of Urban Development Office Memorandum dated 6th December, 2012, in all metropolitan cities, if a person over stays, 65 times of the licence fee is to be paid as damages for unauthorized occupation. This Office Memorandum has been adopted by the IGNOU as applicable to all its employees, vide notification dated 27th January, 2014.

11. According to Mr. Mirza, ld. counsel, therefore, no further rebate in payment of the licence fee/ rent is liable to be granted. The University further relies upon the minutes of meeting dated 28th May, 2020 of the HAC in which one of the Members who was specially invited was from the National Centre for Disability Studies (NCDS). After considering the entire legal position even under the Disabilities Act, the Committee had come to the conclusion that the entire period having been already exhausted for over stay and one month extra having already been given, the market rent would be payable by the Petitioner.

12. Mr. Ritwik Parikh, ld. counsel in rejoinder relies upon Rule 11.2.5 and Rule 22.1 to argue that as per the House Allotment Rules of IGNOU, the Petitioner was entitled to eight months and therefore the Petitioner has not over stayed to the extent as has been made out by the Respondent. Above all, ld. counsel submits that the physical condition of the Petitioner must be considered.

13. Mr. Aly Mirza, ld. counsel also relies upon the judgment of ***Dr. P.R. Ramanujam v. Indira Gandhi National Open University and Prof. H.P. Dikshit, W.P(C) 1578/2006*** dated 25th September 2006 wherein in relation to a disciplinary enquiry conducted against the Petitioner, this Court had observed that there had been no injustice caused to the Petitioner.

Analysis and findings

14. The practice of retaining official accommodation by persons in official capacity beyond their tenure is one, which has been repeatedly frowned upon by various Courts. In ***S. D. Bandi v. Divisional Traffic Officer, KSRTC & Ors. (2013) 12 SCC* 631**, the Supreme Court observed that retaining of residential accommodation provided by Government and related authorities for long durations is unfortunate. The Court cautioned such occupants as under:

> "*29. It is unfortunate that the employees, officers, representatives of people and other high dignitaries continue to stay in the residential accommodation provided by the Government of India though they are no longer entitled to such accommodation. Many of such persons continue to occupy residential accommodation commensurate with the office(s) held by them earlier and which are beyond their present entitlement. The unauthorized occupants must recollect that rights and duties are correlative as the rights of one person entail the duties of another person similarly the duty of one person entails the rights of another person. Observing this, the unauthorized occupants must appreciate that their act of overstaying in the premise directly infringes the right of another. No law or directions can entirely control this act of disobedience but for the self realization among the unauthorized occupants. The matter is disposed of with the above terms and no order is required in I. As for impleadment and intervention.*"

It is in this background that the present petition is to be adjudicated.

15. There is no doubt that the Petitioner has held a very high position in the IGNOU and is also disabled. However, the Petitioner, having served at a high

position in the IGNOU, ought to in fact give greater credence and importance to the Allotment Rules, which apply.

16. As per Rule 11.2 of the Allotment Rules of IGNOU, upon retirement of an employee, four months' time may be granted for retention of the house on payment of normal license fee. Under Rule 11.2.5, if an employee retains the accommodation beyond the permissible limit, damages would be required to be paid, as specified under Rule 22. The relevant Rules read as under:

> "*11.2 A house allotted to an employee may be retained on payment of normal licence fee on the happening of any of the events specified in Col. 1 of the table below for the period specified in the Col.2 thereof; provided that the house is required for the bonafide use of the employee or members of his family. As defined in para 2.5. The employee will seek prior permission for retention of the house.*
> *The permissible period of retention will also be application to the officers of the University who are entitled to rent-free accommodation under the Act/Statute/Ordinance of the University. –*

EVENTS	***PERMISSIBLE PERIOD FOR RETENTION OF THE HOUSE***
i)Resignation, dismissal removal or termination of service or unauthorized absence without permission.	*One month*
ii)Retirement or terminal leave, or repatriation to the parent organization on completion of tenure of appointment	***Four months***

iii) ….

…..

11.2.5 The case of retention of house by the employee beyond the permissible limit as laid down under the relevant event mentioned above, would be required to pay damages as specified in Rule 22.1 for the period in excess of the permissible limit unless he/she sought and obtained prior approval of the competent authority for the retention of the accommodation subject to the provisions of proviso to rule 22.1 in regard to the amount of licence fee."

22 Overstayal in house after cancellation of Allotment.

22.1 Where after an allotment has been cancelled or is deemed to have been cancelled under these rules and the house remains in occupation of the employee to whom it was allotted or any person claiming through him/her such employee shall be liable to pay damages at the rate of Rs. 75/- per sq.mt. of living area per month in respect of type - I to type - III houses and Rs. 110/- per s.q. meter of living area per month in respect of Type - IV and V quarters for use or occupation of the residence. The above rates are subject to revision every two years. The revised rates are effective from O 1-09-2006.

In addition charges towards furniture and garden as stipulated under rule 21.2 will be recovered. Action will also be taken against the employee under the provisions of Public premises (Eviction of Unauthorized Occupants) Act, 1971.

Provided that an employee who was allowed to retain accommodation under Rule 11 may be allowed by the University, in special cases to retain a house on payment of twice the standard licence fee under rules, in advance for a period not exceeding four months beyond the period permitted under Rule 11.

22.2 The employee shall ensure that he/she signs an inventory of fixtures and fittings at the time of taking over possession of the house and shall also ensure its proper handing over to the University at the time of its "vacation".”

17. Apart from the above Rules, which prescribe damages payable, if the period of retention of the premises is beyond the permissible period, damages would have to be paid at 65 times the normal license fee in view of the Office Memorandum (hereinafter, *‘OM’*) dated 6th December 2012 issued by the Ministry of Urban Development, which has been adopted by IGNOU vide notification dated 27th January, 2014. As per the above OM and Notification, in all metropolitan cities, except Mumbai, 65 times the normal license fee would be liable to be paid. The extract of the said notification is set out below:

“*NOTIFICATION*
Consequent upon the approval of BOM in its 119th meeting held vide resolution No.BOM 117.7.1 the rate of damage / market rent on account of unauthorized occupation of IGNOU flats/houses stands revised as under:-

S. No.	*Metropolitan City*	*Type of Accommodation*	*Present Rates*	*Revised*	
				Central	*Non-Central*
(i)	*All Metropolitan Cities except Mumbai*	*Type-I to Type-IV*	*Rs.175/- per sq. meter per month*	*55 times of normal Licence Fee*	*45 times of normal Licence Fee*
(ii)	”	*Type-IV, (Spl.) and above including Hostel accommodation*	*Rs.235/- per sq. meter per month*	***65 times of normal Licence Fee***	*55 times of normal Licence Fee*
(a)	*Mumbai*	*Type-V, Type-VI*	*Rs.750/-*	*120 times of normal*	

	Hyderabad Estate Belvedere and Pedder Road	*and Hostel*	*per sq. meter per month*	*licence fee*	
(b)	*Rest of Mumbai*	*Type-I to Type-V including Hostel*	*Rs.230/- per sq. meter per month*	*65 times of normal Licence Fee*	*55 times of normal Licence Fee*

(i) The rate of damages/market rent will automatically get revised as and when the rate of normal licence fee under FR-45-A is revised. In addition to this garden charges as applicable will also be recovered.

(ii) These rates will be effective from 1st January, and will also be in force till next revision of rate of normal licence fee as per FR-45/A by GOI."

18. A perusal of the above Rules shows that for the first four months of over-stay, the allottee is permitted to retain the accommodation by paying the normal license fee. For a further period of four months, the allottee may be permitted to retain the accommodation by paying double the normal rate of license fee. Thus, by a conjoint reading of the above Rules and Notifications, it is clear that for the period beyond eight months, permitted as per the Allotment Rules, the Petitioner is liable to pay 65 times the license fee.

19. An attempt is made to portray to this Court that 65 times the amount of license fee would be extremely high i.e. as against Rs.1190/- per month, the Petitioner would have to pay Rs.77,350/- per month. Though at first blush, this submission appears attractive, further analysis would reveal that the same is quite misleading. In fact, the total rent which was being paid by the Petitioner while he was in service was as under:

House Rent Allowance (HRA) @ 24% of Basic Pay of Rs. 2,18,000/- = Rs.52,320/-

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License fee = Rs.1190/- per month

20. Thus, the total payment which was being made by the Petitioner, while he was in service, was a sum of Rs.53,510/- per month. The demand now would be Rs.77,350/- per month, which is an increase of approximately Rs.24,000/- per month. The Petitioner has also saved a substantial sum of money during the eight months when he paid bare minimum license fee as there were no HRA deductions during the said months.

21. The ground on which extension is sought is the outbreak of the pandemic and the disability being suffered by the Petitioner. This court is of the opinion that in view of the disability, which is suffered by the Petitioner, the IGNOU authorities through the House Allotment Committee took special care to consider the Petitioner's case. In fact, a perusal of the Minutes of the HAC shows that a representative of the National Centre for Disability Studies (NCDS) was invited to participate in the said meeting. After considering all the facts, the said Committee approved the decision to charge market rent. The said decision of the Committee having being taken into consideration all the applicable Rules as also the Notification, cannot be faulted with.

22. The Petitioner is not entitled to rely upon the pandemic as a reason for further delaying the vacation of the premises as the retirement of the Petitioner took place in August, 2019 i.e. 6-7 months before the outbreak of the pandemic in India. The very first extension was sought by the Petitioner on 4th September, 2019. The extension in response to the said request was granted till 30th April, 2020. Thus, a complete period of 8 months was available for

the Petitioner, during which period, he barely paid any amount for occupying the accommodation. In fact, the Petitioner has benefitted considerably during these 8 months as there was no deduction of HRA and he was only paying the License fee, which is a meagre amount.

23. When the Petitioner sought another extension, just a few days before the expiry of the 8 months, the same was granted for one more month on double the normal rate of license fee, which again was a compassionate view taken by the IGNOU authorities. In fact, for the month of May itself, IGNOU was entitled to charge 65 times the license fee. The Petitioner again sought extension beyond May, 2020 which was accepted, only upon payment of market rent. This decision of IGNOU is challenged in this petition. A prayer is made by the Petitioner that he ought to be granted time till 31st July, 2020 to vacate the premises, only on payment of double license fee.

24. At the time when this Court had entertained the writ petition, the Petitioner was still in occupation of the accommodation. The Court while pending examination of the issues raised, directed that no coercive steps would be taken to vacate the accommodation and on 3rd July, 2020, the undertaking of the Petitioner was accepted for vacating the premises by 31st July, 2020. On 31st July, 2020 the Petitioner moved an application seeking further time for 20 days for vacating the premises, and an extension of 10 more days was granted by the Court. Finally, the Petitioner has vacated the residential accommodation on 10th August, 2020.

25. The only question that, therefore, survives before this Court is as to what amount is payable by the Petitioner for the period beyond 30th May, 2020 i.e. 2 months and 10 days, during which he retained the accommodation.

26. In ***Wazir Chand v. Union of India & Ors., (2001)6 SCC 596*** the

Supreme Court was considering a case where an employee of the Railways continued to occupy the government quarters. The Supreme Court in its order upheld the principle that unauthorized occupants have to pay penal rent. The Supreme Court went to the extent of holding that the government was entitled to even withhold gratuity amount, payable to the employee, towards the penal rent. The order of the Court reads as under:

> "*These appeals are directed against the orders of the Central Administrative Tribunal rejecting the claim of the appellant, who happens to be a retired Railway servant. Admittedly, the appellant even after superannuation, continued to occupy the Government quarter, though being placed under hard circumstances. For such continuance, the Government, in accordance with Rules, has charged penal rent from the retired Government servant, and after adjusting the dues of the Government, the balance amount of the gratuity, which was payable, has been offered to be paid, as noted in the impugned order of the Tribunal. The appellants' main contention is that in view of the Full Bench decision of the Tribunal against which the Union of India had approached this Court and the Special Leave Application was dismissed as withdrawn, it was bounden duty of the Union of India not to withhold any gratuity amount, and therefore, the appellant would be entitled to the said gratuity amount on the date of retirement, and that not having been paid, he is also entitled to interest thereon. We are unable to accept this prayer of the appellant in the facts and circumstances of the present case. The appellant having unauthorisedly occupied the Government quarter, was liable to pay the penal rent in accordance with Rules, and therefore, there is no illegality in those dues being adjusted against the death-cum-retirement dues of*

> *the appellant. We, therefore, see no illegality in the impugned order which requires our interference. The appeals stand dismissed."*

27. Similarly, in ***Radhey Lal v. State of Haryana & Ors. [W.P(C) 7054/2003 Decided on 11th April 2013***], the ld. Single Judge of this Court held that if a person overstayed in Government Quarters, the employer was fully justified in deducting amounts from retiral benefits, in order to recover the penal rent that was so payable.

28. Recently, in ***Y. S. Dwivedi v. Directorate of Estate & Anr. [W.P(C) 3772/2020 Decided on 14th July, 2020],*** the Petitioner therein was an allottee of the Central Government General Pool Residential Accommodation, who prayed that he should be allowed to retain the allotted house on prescribed license fee till the normalization of Covid-19. The Ld. Single Judge extended the time for vacating the premises by 15 days and held that for the period thereafter, market rent would be payable.

29. The Petitioner has relied upon the following judgments in the written submissions, though the same were not cited during the course of arguments.

- ***Satyabrata Ghose v. Mugneeram Bangur & Co. and Another, AIR 1954 SC 44***
- ***Energy Watchdog v. Central Electricity Regulatory Commission & Ors., 2017 (14) SCC 80***
- ***Industrial Finance Corporation of India Ltd. v. Cannanore Spinning and Weaving Mills Ltd. & Ors., (2002) 5 SCC 54***
- ***M/s Halliburton Offshore Services Inc. v. Vedanta Limited & Anr., (OMP (I) (COMM) No.88/2020 decided on 29th May, 2020)***

30. The above four judgments primarily deal with the concept of *force*

majeure and how the existence of *force majeure* would lead to frustration of contractual conditions. In the present case, the Petitioner would not be entitled to relief under *force majeure* as admittedly he superannuated in August, 2019, much before the outbreak of the pandemic. The Petitioner has already been given sufficient time to vacate the premises i.e. 8 months under the Allotment Rules and an additional period of one month as a special case due to the pandemic, to vacate the premises. Thus, beyond the period of 9 months, if the Petitioner wishes to retain the premises, he is bound to pay the damages. These terms and conditions are prescribed in the Rules governing the retention of residential accommodation. Thus, the concept of frustration of contractual conditions due to *force majeure* would have no applicability.

31. Moreover, the difficult and hard circumstances caused by the pandemic have already been taken into consideration by the Authorities in April, 2020 after the outbreak of the pandemic and extension for one more month has already been granted over and above the 8 months of over-stay permitted under the Rules. This Court has also granted the Petitioner, extension till 10th August, 2020. *Force majeure* conditions would not mean that payment, which the Petitioner is liable to make, can be completely discounted. Even in ***Ramanand & Ors. v. Dr. Girish Soni & Anr. [RC. REV.447/2017, decided no 21st May, 2020]***, this Court while recognizing the concept of *force majeure* in landlord-tenant relationships has clearly held that the same would be governed predominantly by the contract, though under extreme circumstances, the Court may consider suspension of rent. The present case is not a case of suspension of rent as the Petitioner has already been given sufficient benefits since the time he retired in August, 2019.

<u>32. The legal position is, thus, well-settled. Anyone who occupies official</u>

accommodation beyond the permissible period is bound by the Rules that govern the retention of the said accommodation. In the present case, the Petitioner does not dispute that the Rules apply to him. Leniency is sought only on compassionate grounds and due to the pandemic.

33. Compassion beyond law is not permissible. The Allotment Rules and the binding Notification make it quite clear that any person who overstays would have to pay the damages as applicable. The Petitioner having held such a high position – stated to be the second highest position in IGNOU, ought to be equally bound by the Rules that apply.

34. The IGNOU has given sufficient time to the Petitioner for vacating the premises, but he has over-stayed. No further leniency can be extended. Accordingly, it is directed that for the month of June and July, 2020, the Petitioner would be liable to pay the entire license fee at market rent i.e. 65 times of the license fee. For the month of August, 2020 the Petitioner would be liable to pay 1/3rd i.e. the proportionate market rent as he had vacated the premises on 10th August, 2020. The Petitioner is directed to pay the amounts as determined, within 8 weeks, failing which the same would be entitled to be recovered, in accordance with law.

35. Petition is disposed of, in these terms.

PRATHIBA M. SINGH
JUDGE

AUGUST 27, 2020
dk/dj/A