

A.F.R.
Judgment Reserved on 24.03.2021
Judgment Delivered on 11.06.2021

Court No. - 3

Case :- CRIMINAL MISC. WRIT PETITION No. - 16386 of 2020

Petitioner :- Shiv Kumar Verma and Another

Respondent :- State Of U.P. and 3 Others

Counsel for Petitioner :- Ganesh Shanker Srivastava, Ashwini Kumar

Counsel for Respondent :- G.A.

Hon'ble Surya Prakash Kesarwani, J. Hon'ble
Shamim Ahmed, J.

(Per: Surya Prakash Kesarwani, J.)

1. Heard Sri Ashwini Kumar, learned counsel for the petitioners and Sri Manish Goyal, learned Additional Advocate General assisted by Sri S.K. Pal, learned Government Advocate and Sri Ali Murtuza, learned A.G.A. for the State-respondents.

2. This writ petition has been filed praying for the following reliefs:

"i) Issue a writ, order or direction in the nature of mandamus directing the respondents to give compensation to the petitioners in lieu of illegal detention from 12.10.2020 to 21.10.2020 in connection with Case Crime No.624 of 2020, State vs. Shiv Kumar Verma and another, under Section 151, 107 and 116 Cr.P.C., Police Station Rohania, District Varanasi."

Facts

3. Briefly stated, facts of the present case are that there was some dispute relating to ancestral property between the petitioners and their family members. In paragraph 3 of the writ petition, it has been stated that some tiff arose between the petitioners and other family members, namely, Rajendra Prasad, Shiv Kumar Verma and Raj Kumar Verma regarding partition of an ancestral land and in apprehension of breach of public peace, the police arrested the petitioners under Section 151 Cr.P.C. on 08.10.2020. A Challani Report dated 08.10.2020 was submitted by the Sub Inspector,

Police Station Rohania, District Varanasi to the Sub Divisional Magistrate, District Varanasi under Section 151/107/116 Cr.P.C., which was in printed form and merely name of the petitioners and others, name of village and "land dispute" have been filled by ink in the aforesaid Challani Report. On receipt of the Challani Report, the Sub Divisional Magistrate registered the case as Case No.624 of 2020 (State vs. Shiv Kumar Maurya and others) and passed the following order on

08.10.2020:

“Ekq0l0 624 lu~ 2020

ljdkj cuke f'kodqekj ekS;Z vkfn

/kkjk&515@107@116 n0iz0la0

Fkkuk&jksgfu;k 08-10-

2020

vkt Fkkuk/;{k jksgfu;k tuin okjk.klh }kjk vUrxZr /kkjk 151@107@116 n0iz0la0 ds vUrxZr pkykuh fjiksVZ ljdkj cuke f'kodqekj ekS;Z vkfn izLrq fd;k x;k vfHk;qDrx.k ds tekur gsrq cU/k i= o 'kiFk i= o eqpydk nkf[ky ugha fd;k x;kA

vr% vfHk;qDrx.k ds tekur gsrq cU/k i= o eqpydk ds miyC/krk rd vfHk;qDrx.k dks fu:} tsy fd;k tkrk gSA i=koyh fnukad 21-10-2020 dks is'k gkAs

v0g0

lR;izfrfyfi

08-10-2020”

4. It appears that on 12.10.2020 the petitioners submitted personal bond and other papers but the respondent no.3 has not released them and instead, under the pretext of verification, directed the file to be placed on 21.10.2020. The order dated 12.10.2020 passed by the respondent no.3 is reproduced below:

“12-10-2020

i=koyh is'kA vfHk;qDrx.k }kjk tekur izkFkZuk i= o cU/k i=@ eqpydk nkf[ky fd;k x;k cU/k i= esa layXu tekunkjh dks [krkSuh dk eqY;kadu gsrq rglhynkj jktLo dks izsf"kr o jkt if=d vf/kdkjh }kjk tkjh vfHk;qDrx.ks dk pfj= izek.k i= nks izfr vr% i=koyh fnukad 21-10-2020 dks is'k gksA

v0g0

lR;izfrfyfi

12-10-2020”

5. Thereafter, on 21.10.2020 the petitioners were released. Aggrieved with the arbitrary and illegal action of the respondents and illegal detention, the petitioners have filed the present writ petition praying for the relief as afore-quoted.

Discussion and Findings

6. We have carefully considered the submissions of learned counsels for the parties.

Action taken by the State Government

7. In paragraph 8 of the counter affidavit dated 02.02.2021, the respondent no.1 has stated that the State Government has taken corrective action in the matter vide letters/circulars dated 30th January, 2021 and 31st January, 2021. The aforesaid letters/circulars dated 30th January, 2021 and 31st January, 2021 are reproduced below:

“Letter/Circular dated 30th January, 2021

QSDI@bZ&esy@ egRoiw.kZ

la[;k& 159@6&iq0&11&21&05 fjV@2021

izs"kd]

r:.k xkck] lfpo]
mRrj izns'k
'kkluA

lsok esa]

iqfyl egkfun'skd] mRrj
izns'kA

x`g¼iqfyl½vuqHkkx&11 y[kuÅ% fnukad%30 tuo]h]2021

fo"k;%& fdzfeuy ¼fel0½ fjV ;kfpdk la[;k& 16386@2020] f'ko dqekj oekZ o vU; cuke m0iz0 jkT; o vU; esa ikfjr ek0 mPp U;k;ky; ds vkns'k fnukad 13-01-2021 ds vuqikyu esa fn'kk&funsZ'k fuxZr djus ds IEcU/k esaA

egksn;]

mi;qZDr fo"k;d fdzfeuy ¼fel0½ fjV ;kfpdk la[;k& 16386@2020] f'ko dqekj oekZ o vU; cuke m0iz0 jkT; o vU; esa ikfjr ek0 mPp U;k;ky; ds vkns'k fnukad 13-01-2021

¼izfr layxz½ dk d`i;k voyksdu djus dk d"V djsaA

2& bl IEcU/k esa eq>s ;g dgus dk funs'k gqv k gS fd ek0 mPp U;k;ky;] bykgkckn }kjk ikfjr mi;qZDr vkns'k fnukad 13-01-2021 ds n`f"Vxr fuEufyf[kr fcUnqvksa dks lfEefyr djrs gq, leLr IEcfU/kr v/khUkLFk vf/kdkfj;ksa dks vius Lrj ls foLr`r fn'kk&funsZ'k fuxZr djus dk d"V djsa%&

¼1½ 107@116@116 ¼3½ lhvkjihlh o 151 lhvkjihlh bR;kfn fujks/kkRed dk;Zokgh dk pkykuh fjiksVZ fizUVsM izksQkekZ ij iszf"kr u fd;k tk,A

¼2½ izR;sd ekeys esa fookn ls IEcfU/kr iw.kZ@lqLi"V ,oa rF;kRed fooj.k

¼lqfopkfjr dkj.kksa lfgr½ vafdr fd;k tk,A

¼3½ izR;sd pkykuh fjiksVZ ds lkFk izdj.k ls IEcfU/kr vko';d izi=] tSlS izkFkZuk i=] ,ulhv kj dh izfr bR;kfn vo'; layxz fd;s tk,A

¼4½ izR;sd pkykuh fjiksVZ ;fn fdlh pkSdh izHkkjh vFkok mi fujh{kd }kjk rS;kj dh tkrh gS rks ml ij IEcfU/kr izHkkjh fujh{kd@Fkkuk/;{k }kjk ijh{k.k dj viuh Li"V ,oa rF;kRed fVli.kh vafdr djus ds mijUr gh vfxze dk;Zokgh gsrq iszf"kr dh tk,A

layxzd% ;FkksifjA

Hkonh;

¼r:.k xkck½

lfpoA”

8. In compliance to the aforequoted Government Order dated 30.01.2021, the Director General of Police, Uttar Pradesh has issued a Circular being letter No. Mhth&vkB&94 ¼funsZ'k½ 2021, dated 31.01.2021 to all the Zonal Additional Director General of Police, Uttar Pradesh, and all the Police Commissioners, Uttar Pradesh and directed them to ensure strict compliance of the aforequoted Government order.

9. From the facts briefly noted above and the counter affidavit of respondent no.1, it stands admitted that the police authorities are arbitrarily and illegally submitting Challani Reports under Sections 107/116 Cr.P.C. Since the respondent no.1 has taken steps to correct the mistakes and illegalities, therefore, we do not propose to issue any further direction in that regard, except that the afore-quoted Circulars dated 30th January, 2021 and 31st January, 2021 shall be strictly implemented in the whole of the State of Uttar Pradesh.

10. In the counter affidavit dated 01.02.2021, the respondent no.3 has stated in paragraph 5 and 8 that "the petitioners submitted the applications through their counsel that they are ready to furnish personal bonds as well as bail bonds, therefore, they may be released on bail and the answering respondent directed the concerned Tehsildar to verify the revenue records produced by the sureties and on verification the petitioners shall be released on 21.10.2020 on bail."

11. In his counter affidavit, the respondent no.3 has tried to justify his arbitrary action and clear breach of statutory duty cast upon him as well as the fundamental rights guaranteed under Article 14 and 21 of the Constitution of India. In this regard, it would be appropriate to refer to the provisions of Sections 107, 111 and 116 of the Code of the Criminal Procedure, 1973, which are reproduced below:

"107. Security for keeping the peace in other cases.

(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

(2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction.

"111. Order to be made. When a Magistrate acting under section 107, section 108, section 109 or section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required."

"116. Inquiry as to truth of information.

(1) When an order under section 111 has been read or explained under section 112 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant, issued under section 113, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

(2) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trial and recording evidence in summons-cases.

(3) After the commencement, and before the completion, of the inquiry under sub-section (1), the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under section 111 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded: Provided that-

(a) no person against whom proceedings are not being taken under section 108, section 109, or section 110 shall be directed to execute a bond for maintaining good behaviour;

(b) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 111.

(4) For the purposes of this section the fact that a person is an habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community may be proved by evidence of general repute or otherwise.

(5) Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate shall think just.

(6) The inquiry under this section shall be completed within a period of six months from the date of its commencement, and if such inquiry is not so completed, the proceedings under this Chapter shall, on the expiry of the said period, stand terminated unless, for special reasons to be recorded in writing, the Magistrate otherwise directs: Provided that where any person has been kept in detention pending such inquiry, the proceeding against that person, unless terminated earlier, shall stand terminated on the expiry of a period of six months of such detention. (7) Where any direction is made under sub-section (6) permitting the continuance of proceedings, the Sessions Judge may, on an application made to him by the aggrieved party, vacate such direction if he is satisfied that it was not based on any special reason or was perverse."

12. Section 107 Cr.P.C. requires the Magistrate receiving the information that any person is likely to commit a breach of peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit. Perusal of the order dated 08.10.2020, passed by the respondent no.3 would reveal that there is no such satisfaction recorded by the respondent no.3. The aforesaid order dated 08.10.2020 would further reveal that the respondent no.3 has not required the petitioners to show cause that why they should not be ordered to execute a bond with or without sureties. Thus, the respondent no.3 has committed clear breach of mandate of Section 107 Cr.P.C.

13. Section 111 Cr.P.C. provides that when a Magistrate acting under section 107, section 108, section 109 or section 110, deems it necessary to require any person to show cause under such section, he shall make an order

in writing, setting forth (i) the substance of the information received, (ii) the amount of the bond to be executed, (iii) the term for which it is to be in force, and (iv) the number, character and class of sureties (if any) required. These necessary ingredients of Section 111 Cr.P.C. are totally absent in the order dated

08.10.2020 passed by the respondent no.3. Thus, it is evident on record that the respondent no.3 has acted arbitrarily and illegally.

14. It would further be relevant to note that admittedly the petitioners have submitted personal bond on 12.10.2020 although the order passed by the respondent no.3 dated 08.10.2020 does not specify the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties, if any, required. Despite submission of personal bond and other papers on 12.10.2020 by the petitioners before the respondent no.3, they were not released by the respondent no.3 and that too against his own order dated 08.10.2020 that the petitioners shall be detained till presentation of personal bond/bail bond. Non release of the petitioners by the respondent no.3 even after submission of personal bond/bail bond and other papers, is a clear breach of Article 21 of the Constitution of India, by the respondent no.3 which resulted in illegal detention of the petitioners at least since 12.10.2020 to 21.10.2020.

15. On 02.02.2021 this Court noted the statement made by the State Government in Paragraph 15 of the order dated 02.02.2021 as under:

“15. Learned Additional Advocate General and the Secretary, Home, U.P. Lucknow jointly state that the State Government shall develop a mechanism and shall also issue appropriate guidelines so as to ensure that such instances may not repeat again. They further state that the State Government shall consider to grant monetary compensation to the petitioners for breach of their fundamental rights under Article 21 of the Constitution of India.”

16. In pursuance to the statement made on own behalf of the State government as noted in the aforequoted paragraph 15 of the order dated 02.02.2021, the State Government filed an affidavit of compliance dated 24.03.2021 of Sri Tarun Gauba, Secretary, Home Affairs, Uttar Pradesh, in which in paragraph 10 it has been stated as under :

“That it is most respectfully submitted that the State Government has issued directions to all District Magistrates and all Executive and Special Magistrates who are sub ordinate to the District Magistrates, to exercise their power under Section 107, 116 Cr.P.C. for maintenance of public peace and public tranquility in their territorial jurisdiction. They have been further advised that each and every case under the aforesaid proceedings shall be decided on its own merit with the application of judicial mind and in accordance with the established law & procedure to ensure that the fundamental rights of citizens are protected. The State Government has directed all the District Magistrates of the State to ensure strict compliance of the policy/guideline dated 23rd March, 2021. The State Government has reformulated the earlier policy dated 02.03.2021 and after including the aforementioned issues it has re-issued policy/guideline dated 23rd March, 2021. For kind perusal of this Hon'ble Court copy of policy/guideline dated 23rd March, 2021 is being filed herewith and marked as Annexure-1 to this affidavit.”

17. The policy of the State Government dated 23.03.2021 appended as Annexure 1 to the aforesaid affidavit of compliance dated 24.03.2021, is reproduced below :-

[EkgRoiw.kZ@fn'kk&funsZ'k la\];k&580ih@6&iw0&3&2021](mailto:EkgRoiw.kZ@fn'kk&funsZ'k la];k&580ih@6&iw0&3&2021)

isz"kd]

vouh'k dqekj voLFkh
vij eq[; lfpo] m0 iz0
'kkluA

lsok esa]

leLr ftykf/kdkjh] mRrj
izns'kA

x`g %iqfyl½ vuqHkkx&3 y[kuÅ % fnuakd % 23 ekpZ] 2021

fo"k; %& fdzfeuy fel fjV fiVh'ku la];k&16386@2020] f'ko dqekj oekZ ,oa vU; cuke m0 iz0 jkT; o vU; esa ek0 mPp U;k;ky;] bykgkckn }kjk ikfjr vkn's k fnukad 02-02-2021 ds vuqikyu ds laca/k esa fn'kk&funsZ'kA

egksn;] mi;qZDr fo"k;d 'kklu ds i= la[;k&392ih@6&iq0&3&2021] fnukad 02 ekpZ] 2021
dk

d`i;k lanHkZ xzg.k djus dk d"V djsa] ftlds ek;/e ls ek0 mPp U;k;ky;] bykgkckn esa ;ksftr
fdzfeuy fel fjV fiVh'ku la[;k&16386@2020] f'ko dqekj oekZ ,oa vU; cuke m0 iz0 jkT; o
vU; esa ek0 mPp U;k;ky; }kjk ikfjr vkns'k fnukad 02-02-2021 ds vuqiky esa ifj'kkfUr
dk;e j[kus ds mn~ns'; ls n.M izfdz;k lafgrk] 1973 ds v/khu /kkjk 107@116@151 ds rgr
dk;Zdkjh eftLV^{as}V dks izklr 'kfDr;ksa ds fdz;kUou ds fo"k; esa visf{kr fn'kk&funsZ'k fuxZr
fd;s x;s FksA

2- fdzfeuy fel fjV fiVh'ku la[;k&16386@2020] f'ko dqekj oekZ ,oa vU; cuke m0 iz0 jkT; o
vU; esa ek0 mPp U;k;ky; }kjk ikfjr vkns'k fnukad 03-03-2021 esa dfri; fcUnqvksa dks mDr
fn'kk&funsZ'k esa lekosf'kr fd;s tkus ds vkn's k fn;s x;s gASa

3& ek0 mPp U;k;ky; }kjk ikfjr mDr vkns'k fnukad 03-03-2021 ds vuqiky esa 'kklu ds i=
la[;k&393ih@6&iq0&3&2021] fnukad 02 ekpZ] 2021 dks vodzfer djrs gq, IE;d~
fopkjksijkUr ifj'kkfUr dk;e j[kus ds mn~ns'; ls n.M izfdz;k lafgrk] 1973 ds v/khu /kkjk
107@116@151 ds rgr dk;Zdkjh eftLV^{as}V dks izklr 'kfDr;ksa ds fdz;kUou ds fo"k; esa
layXukuqlkj visf{kr fn'kk&funsZ'k fuxZr fd;s tkrs gSaA 4& d`i;k mDr fn'kk&funsZ'kksa dk
dM+kbZ ls vuqiky djuk lqfuf'pr djus dk d"V djsaA layXud% ;FkksifjA

Hkonh;]

g0 viBuh;

¼vough'k dqekj voLFkh½

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izfrfyfi fuEufyf[kr dks lwpukFkZ ,oa vko';d dk;Zokgh gsrq izsf"kr%&
¼1½ iqfyl egkfun's kd] m0 iz0 y[kuÅA
¼2½ vij iqfyl egkfuns'kd] leLr tksu] m0 iz0A
¼3½ iqfyl egkfujh{kd@mi egkfujh{kd} leLr ifj{ks=} m0 iz0
¼4½ ofj"B lkqfyl v/kh{kd@iqfyl v/kh{kd} leLr tuin]m0 iz0A

vkKk ls]

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ifj'kkfUr dk;e j[kus ds mn~ns'; ls n.M izfdz;k lafgrk] 1973 ds v/khu /kkjk
107@116@151 ds rgr dk;Zdkjh eftLV^{as}V dks izklr 'kfDr;ksa ds fdz;kUou ds
fo"k; es fn'kk&funsZ'k%&

vius vf/kdkfjrk {ks= ds vUrxZr ifj'kkfUr dk;e j[kus ds fy, ,sls O;fDr;ksa]
ftuls ifj'kkfUr Hkax gksus vFkok yksd iz'kkfUr fo{kqC/k gksus dh IEHkkouk
gS] ds f[kykQ fujks/kd dk;Zokfg;ka fd;s tkus gsrq n.M izfd;k lafgrk] 1973 ds

vURkxZr dk;Zdkjh eftLV^{as}V dks ;FkkfufnZ"V vf/kdkj fn;s x;s gS rFkk bldh iwjh izfdz;k dk fof/kor~ mYys[k Hkh fd;k x;k gS] rFkkfi ;nkdnk ,sls n`"VkUr lkeus vkrs gS ftuls ;g vkHkkflr gksrk gS fd IEcfU/kr dk;Zdkjh eftLV^{as}V us fcuk U;kf;d efLr"d dk iz;ksx fd;s vkns'k ikfjr fd;k gS vFkok fu/kkZfjr izfdz;k dk leqfpr vuqikyu ugh fd;k gSA ,sls gh ,d izdj.k ¼fdzfeuy fjV fiVh'ku la[k&16386@2020] f'kodqekj oekZ ,oa vU; cuke m0 iz0 jkT; ,oa vU;] vkns'k fnukad 02-02-2021½ esa ek0 mPp U;k;ky;] bykgkckn us IEcfU/kr dk;Zdkjh eftLV^{as}V jkjk fuxZr vkns'kksa dks IE;d~ u ekurs gq, ,d mfpr dk;Ziz.kkyh ¼Mechanism½ fodflr fd;s tkus rFkk ;Fkksfpr fn'kk&funsZ'k fuxZr fd;s tkus dk vkns'k fn;k gSA

'kkafr O;oLFkk o yksd iz'kkafr cuk;s j[kus ds mn~ns'; ls fujks/kd dk;Zokfg;ksa ds fo"k; es n.M izfdz;k lafgrk] 1973 ds vUrxZr dk;Zdkjh eftLV^{as}V dh vf/kdkfjrk ,oa izfdz;k dk fof/kor~ mYys[k fd;k x;k gSA vko';drk bl ckr dh gS fd dk;Zdkjh eftLV^{as}V jkjk vius U;kf;d efLr"d dk iz;ksx djrs gq, ,oa fu/kkZfjr izfdz;k dk vuqikyu djrs gq, izR;sd Lrj ij eq[kfjr ¼speaking½ vkns'k ikfjr fd, tk;saA fujks/kd dk;Zokfg;ksa ds fo"k; esa n.M izfdz;k lafgrk] 1973 esa mYysf[kr lqlaxr izko/kku ,oa muds fo"k; esa visf{kr ekxZ&funZs'k fuEuor~ tkjh fd, tk jgs gS %&

1&/kkjk&107&¼ifj'kkfUr dk;e j[kus ds fy, izfrHkwfr½ ds fo"k; esa& bl fo"k; esa n.M izfdz;k lafgrk es eq[; izko/kku fuEuor~ gSa&

tc fdlh dk;Zikyd eftLV^{as}V dks bfRryk feyrh gS fd IEHkkO; gS fd mlds vf/kdkfjrk {ks= esa dksbZ O;fDr ifj'kkfUr Hkax djsxk ;k yksd iz'kkfUr fo{kqC/k djsxk ;k dksbZ ,slk lnks"k dk;Z djsxk ftlls LkEHkkO;r% ifj'kkfUr Hkax gks tk,xh ;k yksd iz'kkfUr fo{kqC/k gks tk,xh rc ;fn mldh jk; esa dk;Zokgh djus ds fy, lk;kZlr vk/kkj gS rks og] ,sls O;fDr ls blesa bls i'pkr~ micfU/kr jhfr ls vis{kk dj ldrk gS fd og dkj.k nf'kZr djs fd ,d o"kZ ls vuf/kd dh bruh vof/k ds fy,] ftruh eftLV^{as}V fu;r djuk Bhd le>s] ifj'kkfUr dk;e j[kus ds fy, mls izfrHkqvksa lfgr ;k jfgr cU/k i= fu"ikfnr djus ds fy, vkns'k D;kas u fn;k tk,A

/kkjk & 151& laKs; vijj/kksa dk fd;k tkuk jksdus ds fy, fxjQrkjh ds fOk"k; esa izko/kku fuEuor~ gS &

(1) dksbZ iqfyl vf/kdkjh ftls fdlh laKs; vijj/k djus dh ifjdYiuk dk irk gS] ,slh ifjdYiuk djus okys O;fDr dks eftLV^{as}V ds vkns'kksa ds fcuk vkSj okj.V ds fcuk ml n'kk esa fxjQrkj dj ldrk gS] ftlesa ,sls vf/kdkjh dks izrhr gksrk gS fd ml vijj/k dk fd;k tkuk vU;Fkk ugha jksdk tk ldrkA

(2) mi/kkjk ¼1½ ds v/khu fxjQ~rkj fd, x, fdlh O;fDr dks mldh fxjQrkjh ds le; ls pkSchl ?k.Vs dh vof/k ls vf/kd ds fy, vfHkj{kk esa ml n'kk ds flok; fu#) ugh j[kk tk,xk ftlesa mldk vkSj vkxs fu#) j[kk tkuk bl lafgr ds ;k rRle; izo`Rr fdlh vU; fof/k ds fdUgh vU; micU/kks ds v/khu visf{kr ;k izkf/kd`r gSA

mijksDr nksuks /kkjvkksa ds vUrxZr LFkkuh; iqfyl vFkok vU; izkf/kdkjh } kik
dk;Zdkjh eftLV^a sV dks bfRryk fn;s tkus ¼pkykuh fjiksVZ½ ds fo"K; es
fuEuor~ fn'kk&funsZ'k fn;s tkrs gS &

- 107@151 lhvkjihlh dh pkykuh fjiksVZ fizUVsM izksQkekZ ij fjfDr dks Hkjrs gq, ¼filling the blanks½ izsf"kr u fd;k tk, vfirq izR;sd izdj.k dh esfjV dks nf'kZr djrs gq, eq[kfjr vk[;k Hksth tk,A
- izR;sd ekeys es fookn ls lecfU/kr iw.kZ] lqLi"V ,oa rF;kRed fooj.k ¼lqfopkfjr dkj.kksa lfgr½ vafdr dh tk,A ;g Hkh Li"V fd;k tk, fd vkjsih O;fDr ;k O;fDr;ksa ls 'kkafr Hkax dh laHkkouk fdl vk/kkj ij gSA
- izR;sd pkykuh fjiksVZ ds lkFk izdj.k ls lEcU/kr vko';d izi=] tSlS izkFkZuk i=] ,ulhvkJ dh izfr bR;kfn vo'; layXu fd;s tk,A
- izR;sd pkykuh fjiksVZ ;fn fdlh pkSdh izHkkjh vFkok mi fujh{kd }kjk rS;kj dh tkrh gS rks ml ij lEcU/kr izHkkjh fujh{kd@Fkkuk/;{k }kjk ijh{k.k dj viuh Li"V ,oa rF;kRed fVli.kh vafdr djus ds mijUr gh vfxze dk;Zokgh gsrq izsf"kr dh tk,A ➤ ;fn 107@116 dh pkykuh fjiksVZ ds lkFk vkjsih O;fDr dks n.M izfdz;k lafgrk dh

/kkjk&151 ds rgr fxjQrkj dj eftLV^asV ds le{k izLrqr Hkh fd;k tk jgk gS rks ,slh fLFkfr esa pkykuh fjiksVZ es fo'k"V #i ls ;g Li"V fd;k tkuk vko';d gS fd fdl laKs; vijk/k dks dkfjr djus gsrq vkjsih O;fDr izo`Rr Fkk] ftls vU;Fkk ugh jksdk tk ldrk Fkk vkSj jksdus ds fy, mls fxjQrkj fd;k tkuk vko';d FkkA

2& /kkjk&111& ¼izkajfHkd vkns'k@uksfVl½ ds fo"K; esa & bl
fo"K; es n.M izfdz;k lafgrk esa eq[; izko/kku fuEuor~ gS &

tc dksbZ eftLV^asV] /kkjk 107] /kkjk 108] /kkjk 109] ;k /kkjk 110 ds v/khu dk;Z dj jgk gS] ;g vko';d le>rk gS fd fdlh O;fDr ls vis{kk dh tk, fd og ml /kkjk ds v/khu dkj.k nf'kZr djs rc og eftLV^asV izklr bfRryk dk lkj] ml cU/ki= dh jde] tks fu"ikfnr fd;k tkuk gS] og vof/k ftlds og izorZu esa jgsxk vkSj izfrHkqvksa dh ¼;fn dksbZ gks½ vis{kr la[;k] izdkj vkSj oxZ crks gq, fyf[kr vkns'k nsxkA bl lEcU/k esa fuEuor~ fn'kk&funsZ'k fuxZr fd, tkrs gS &

- dk;Zdkjh eftLV^asV dks Hkyh Hkakfr ;g laKkfur gksuk vko';d gS fd ml /kkjk ds vUrxZr fuxZr vkns'k ,d izkjfEHkd vkns'k gS ftlds }kjk vkjsih O;fDr dks dkj.k nf'kZr djus ds fy, lalwfpr fd;k tkrk gS fd mlDs }kjk 'kkafrHkax djus vFkok yksd iz'kkafr fo{kqC/k djus dh laHkkouk dks ns[krs gq, 'kkafr O;oLFkk cuk;s j[kus ds mn~ns'; ls ,d fu'pr vof/k gsrq D;ksa u cU/ki= ¼izfrHkw lfgr@ izfrHkw jfgr½ izLrqr djus gsrq vkns'k fn;s tk,A
- bl /kkjk ds v/khu vkjsih dks vUrfje vFkok vafre #i ls cfU/kr ugh fd;k tk ldrkA bl izkajfHkd vkns'k ds ckn vko';d tkap@lk{; ladyu ds i'pkr~ gh esfjV ij vkns'k fuxZr fd;k tkuk mfpr gSA fo'k"V@vkekfrd ifjLFkfr esa ;fn tkap@lk{; ladyu dh vof/k esa Hkh vkjsih O;fDr }kjk 'kkafr Hkax fd, tkus dh laHkkouk gks vkSj eftLV^asV dks bl vk'k; dk lek/kku gks rks tkap dh vof/k rd fy, varfje #i ls /kkjk&116¼3½ ds rgr cU/ki=@izfrHkw izLrqr djus gsrq vkns'k fn;k tk ldrk gSA ijUrq fdlh Hkh n'kk esa /kkjk&111 ds izkajfHkd vkns'k esa gh cU/ki=@tekur ds fo"K;

esa varfje ;k vafre vkns'k ugh fn;k tkuk pkfg,] blh izdkj /kkjk&116¼3½
ds vUrxZr varfje ikcUnh vkns'k] /kkjk&111 ds vUrxZr izkjafHkd vkns'k
tkjh fd, fcuk ugh fd;k tkuk pkfg,A

- bls Nis&Nik;s izksQkekZ ij fuxZr ugh fd;k tkuk pkfg, vfirq ,d
fyf[kr@Vafdr'kqnk o eq[kfjr vkns'k fuxZr fd;k tkuk pkfg,A
- izkjafHkd vkns'k esa bfRryk dk lzksr ,oa bfRryk ds lkj dk mYys[k vo';
fd;k tk,A lkj 'kCn ls vk'k; gS fd bfRryk ds egRoiw.kZ va'kks dk fupksM+
mYysf[kr gksuk pkfg,] rkRi;Z ;g gS fd uksfVl es bl ckr dk mYys[k gksuk
pkfg, fd fdu vk/kkjksa ij fdlh O;fDr dks ikcUn djus dk izLrko gS] ftlls
og budk mRrj ns ldsA
- dk;Zdkjh eftLV^{as}V ls visf{kr gS fd oks izkjafHkd vkns'k esa] mUgSa nh
x;h bfRryk esa vafdr rF; ,oa fooj.k ds izfr viuk lek/kku vo'; vafdr djsaA
- izkjafHkd vkns'k esa cU/ki= dh /kujkf'k ,oa vof/k dk Li"V mYys[k
gksuk pkfg, ¼;g vof/k /kkjk&107@108@109 ds izdj.k esa ,d o"kZ ls
vf/kd ugh gksxh rFkk /kkjk&110 ds izdj.k esa rhu o"kZ ls vf/kd ugha
gksxhA½
- ;fn eftLV^{as}V dks ;g lek/kku gksrk gS fd cU/ki= ds lkFk izfrHkw fy;k tkuk
Hkh vko';d gS rks /kkjk&111 ds vUrxZr fuxZr izkjafHkd vkns'k esa gh
izfrHkw dh la[;k] izd`fr rFkk oxZ ¼Number, character and class of
sureties½ dk Li"V mYys[k fd;k tkuk pkfg,A

3- /kkjk 112]113]114]115 ls lEcU/kr izko/kku ,oa fn'kk&funsZ'k& bu

/kkjvkks esa mfYyf[kr izko/kku Lor% Li"V gS] rFkkfi bl fo"k; esa dfri; rF; Li"V

fd;k tkuk vko';d gS] ;Fkk fd &

- ;fn ;g O;fDr ftlds ckjs es izkjafHkd vkns'k fn;k x;k gS] U;k;ky; esa
mifLFkr gS rks mls i<+dj lquk;k tk,xk vkSj ;fn og ,slk pkgs rks mldk lkj Hkh
mls le>k;k tk,xkA
- ;fn ,slk O;fDr U;k;ky; es mifLFkr ugh gS rks eftLV^{as}V mlls gkftj gksus
dh vis{kk djrs gq, leu tkjh djsxkA
- ;fn ,slk O;fDr vfHkj{kk esa gS rc og ftl vf/kdkjh dh vfHkj{kk esa gS ml
vf/kdkjh dks] mls U;k;ky; ds le{k ykus dk funsZ'k nsrs gq, okjUV tkjh djsxkA
- ;fn izklr bfRryk ls eftLV^{as}V dks bl ckr dk lek/kku gS] fd vkjksih O;fDr }kjk
ifj'kkafr Hkax gksus ds lk;kZlr dkj.k gS vkSj vkjksih O;fDr dh rqjUr fxjQrkjh
ds fcuk ,sls ifj'kkafr Hkax djus dk fuokj.k ugh fd;k tk ldrk gS] rc eftLV^{as}V
mldh fxjQrkjh ds fy, fdlh le; okj.V tkjh dj ldrk gSA
- ,sls izR;sd leu@okj.V ds lkFk /kkjk&111 ds v/khu fn;s x;s izkjafHkd
vkns'k dh izfr layXu fd;k tkuk rFkk vkjksih ij rkehyk dj;k tkuk vko';d gksxkA
- lk;kZlr vk/kkj o lek/kku gksus ij eftLV^{as}V vkjksih O;fDr dks oS;fDrd
gkftjh ls eqfDr ns ldrk gS vkSj tfj, vf/koDrk@lyhMj gkftj gksus gsrq vkns'k
ns ldrk gSA

4&/kkjk&116&dk;Zdkjh eftLV^asV dks izklr bfRRkyk dh IPpkbZ ds ckjsa tkap &

bl fo"k; esa n.M izfdz;k lafgrk esa eq[; izko/kku fuEuor~ gSa &

(1) tc /kkjk 111 ds v/khu vkns'k fdLh O;fDr dks] tks U;k;ky; es mifLFkr gS] /kkjk 112 ds v/khu i<dj lquk ;k le>k fn;k x;k gS vFkok tc dksbZ O;fDr /kkjk 113 ds v/khu tkjh fd, x, leu ;k okj.V ds vuqiky ;k fu"iknu es eftLV^asV ds le{k gkftj gS ;k yk;k x;k gS rc eftLV^asV ml bfRryk dh IPpkbZ ds ckjs esa tkap djus ds fy, vxzlj gksxk ftlds vk/kkj ij og dk;Zokgh dh xbZ gS vkSj ,slk vfrfjDr lk{; ys ldrk gS tks mls vko';d izrhr gSA

(2) ,slh tkap ;Fkklk/;] ml jhfr ls dh tk,xh tks leu&ekeyksa dsfopkj.k vkSj lk{; ds vfHkys[ku ds fy, blesa bls i'pkr~ fofgr gSA

(3) mi/kkj ¼1½ ds v/khu tkap izkjEHk gksus ds i'pkr~ vkSj mldh lekflr ls iwoZ ;fn eftLV^asV le>rk gS fd ifj'kkfUr Hkax dk ;k yksd iz'kkafr fo{kqC/k gksus dk ;k fdLh vij/k ds fd, tkus dk fuokj.k djus ds fy,] ;k yksd lqj{kk ds fy, rqjUr mik; djus vko';d gSa] rks og ,sls dkj.kksa ls] ftUgSa ys[kc) fd;k tk,xk] ml O;fDr dks] ftlds ckjs esa /kkjk 111 ds v/khu vkns'k fn;k x;k gS] funZs'k ns ldrk gS fd og tkap lekIr gksus rd ifj'kkafr dk;e j[kus vkSj lnkpj cus jgus ds fy, izfrHkqvksa lfgr ;k fgr cU/k i= fu"ikfnr dj vkSj tc rd ,slk cU/ki= fu"ikfnr ugha dj fn;k tkrk gS] ;k fu"iknu esa O;frdze gksus dh n'kk es tc rd tkap lekIr ugh gks tkrh gS] mls vfHkj{kk esa fu#) j[k ldrk gS]

ijUrq &

¼d½ fdLh ,sls O;fDr dks] ftlds fo#) /kkjk 108] /kkjk 109 ;k /kkjk 110 ds v/khu dk;Zokgh ugha dh tk jgh gS] lnkpj cus jgus ds fy, cU/ki= fu"ikfnr djus ds fy, funZs'k ugh fn;k tk,xk]

¼k½ ,sls cU/ki= dh 'krasZ] pkgs os mldh jde ds ckjs esa gks] ;k izfrHkq miyC/k djkus ds ;k mudh la[k ds] ;k muds nkf;Ro dh /ku lECU/kh lhek ds ckjs esa gks] muls vf/kd nqHkZj u gksaxh tks /kkjk 111 ds v/khu vkns'k esa fofufnZ"V gSA

bl fo"k; esa fuEuor~ fn'kk&funZs'k fn;s tkrs gS &

- fcuk /kkjk&111 ds rgr izkajfHkd vkns'k fuxZr fd,] /kkjk&116 ds rgr tkaprFkk /kkjk&116¼3½ ds rgr ikcUnh dk vkns'k ugha fd;k tkuk pkfg,A
- /kkjk&116 ds v/khu dh tkus okyh tkap ,d iw.kZ U;kf;d tkap gSA bl tkap esa U;kf;d dk;Zokgh dh leLr vkSipkfjdrkvksa dk vuqiky fd;k tkuk pkfg,A ;FkklAHko vkjksfir i{k ds lkeus gh lk{; vfHkfyf[kr fd;k tkuk pkfg, rFkk xokgksa dks foi{kh ls ftjg djus dk volj fn;k tkuk pkfg,A
- /kkjk&116¼3½ eftLV^asV dks bl ckr ds fy, leFkZ djrh gS fd og foi{kh dks tkap iw.kZ gksus rd varfje cU/ki= ¼izfrHkw lfgr ;k izfrHkw jfgr½ izLqr djus dh vis{k dkj lds] ij ;g rHkh fd;k tkuk pkfg, tc 'kkafr O;oLFkk dk;e j[kus gsrq rqjUr mik; vko';d gks] dk;Zokgh djus ds dkj.k

vfHkfyf[kr fd, x, gksa] varfje cU/ki= ekaxus ds iwoZ tkap dj yh x;h gks rFkk /kkjk & 111 esa ;Fkksfpr izkjafHkd vkns'k ikfjr dj fn;k x;k gksA ➤ ^^rqjUr mik;^^ ls vk'kf;r gS fd tc ifj'kkafr Hkax gksus dk] ;k yksd iz'kkafr ds fo{kqC/k gksus dk ;k vijk/k fd, tkus dk fuokj.k djus ds fy, ;k yksd lqj{kk ds fy, rqjUr mik; vko';d gSA ;g rc rd ykxw gksxk tc vkjksih O;fDr vfHkj{kk esa ugh gS vkSj fcuk cU/ki= ds LorU= jgus ij yksd lqj{kk bR;kfn ds fy, [krjk jgrk gSA

- eftLV³sV ls vis{kk gS fd /kkjk&116¼3½ ds rgr vkns'k djus ls iwoZ /kkjk&107 dh dk;Zokgh ds fy, nh x;h lwpuk dh lR;rk ds ckjs esa tkap djsA lkFk gh eftLV³sV dks dk;Zokgh dk U;k;ksfpr dkj.k vfHkfyf[kr djuk Hkh visf{kr gSA
- /kkjk&116¼3½ ds rgr eftLV³sV dks varfje cU/ki= nkf[ky djus dk vkns'k vius U;k;f;d eflr"d dk iz;ksx dj vius lek/kku dks vafdr djrs gq, djuk pkfg,A
- /kkjk&111 o /kkjk&116¼3½ nks i`Fkd mn~ns';ksa ds fy, fofgr dh xbZ gSA vr% eftLV³sV dks /kkjk&111 o /kkjk&116¼3½ ds v/khu la;qDr vkns'k ugha djuk pkfg,A ➤ bl /kkjk ds v/khu tkWap] mlds vkjaHk gksus dh rkjh[k ls N% ekl dh vof/k ds vanj iwjh dh tk,xh] ysfdu ;fn eftLV³sV blds fy, fo'ks"k dkj.k ikrk gS rks viuk lek/kku vafdr djrs gq, bl vof/k esa o`f) dj ldrk gSA ;fn ,slk fof'k"V vkns'k ugha fd;k x;k gS rks N% ekg dh vof/k ds ckn /kkjk&107 dh dk;Zokgh Lor% leklr gks tk;sxA ,d ckj ,slh tkWap leklr gksus ij eftLV³sV dks bl dk;Zokgh dks Lor% iqu%thfor (Revive) ugha djuk pkfg,A
- ;fn vkjksih O;fDr tkWap yfEcr jgus ds nkSjku fu:) j[kk x;k gS rks mlds fo:) fdlh Hkh fLFkfr esa tkWp dh vof/k ifjlhek esa o`f) djus ds fy, eftLV³sV l'kDr ugha gSA ,sls O;fDr ds fo:) dk;Zokgh 6 ekg dh vof/k dh lekflr ij i;Zoflr gks tk;sxA ➤ cU/ki= dh /kujkf'k ,oa izfrHkw dk oxZ] izdkj o la[k;k mlls vf/kd ugha gks ldrh ftruh /kkjk&111 ds izkjafHkd vkns'k esa fyf[kr gSA

5&/kkjk&117&¼xq.k&nks"k ij cU/ki=@izfrHkwfr nsus dk vkns'k½ ds fo"k; esa izko/kku ,oa fn'kk&funsZ'k &

;fn xq.k&nks"k ij lquokbZ@ tkWap ls ;g lkfcr gks tkrk gS fd ;FkklLFkfr ifj'kkafr cuk, j[kus ds fy, ;k lnkpj cuk, j[kus ds fy, ;g vko';d gS fd og O;fDr ftlds ckjs esa tkWap dh xbZ gS] izfrHkwvksa lfgr ;k jfgr cU/ki= fu"ikfnr djs rks eftLV³sV fuEu lko/kfu;kWa cjrrs gq, vkns'k tkjh djsxk&

- fdlh O;fDr dks ml izdkj ls fHkUu izdkj dh ;k ml /kujkf'k ls vf/kd /kujkf'k dh ;k ml vof/k ls nh?kZ vof/k ds fy, vkns'k ugha fd;k tk,xk tks /kkjk&111 ds v/khu fn;s x;s izkjafHkad vkns'k esa mfYyf[kr gSA mnkgj.kFkZ ;fn /kkjk&111 dh ukxfvl esa izfrHkwfr ugha ekaxh x;h gS rks varfje vkns'k esa Hkh cU/ki= izfrHkwfr lfgr fu"ikfnr djus dk vkns'k ugha fn;k tk ldrk gSA
- izR;sd cU/ki= dh /kujkf'k ekeys ds xq.kkoxq.k o ifjLFkfr;ksa dk lE;d /;ku j[krs gq, fu;r dh tkuh pkfg,A blh izdkj izfrHkwfr foi{kh ds lk/ku rFkk mlds thou Lrj dks n`f"Vxr j[krs gq, nkf[ky djus dk vkns'k fn;k tkuk pkfg,A

- ;fn vkjsih vo;Ld gks rks cU/ki= mlds izfrHkwvksa }kjk fu"ikfnr fd;k tk,xkA

6&/kkjk&118 ¼vkjsih O;fDr ds mUekspu ds fo"k; esa½ izko/kku ,oa fn'kk&funsZ'k&

;fn /kkjk&116 ds v/khu tkWp ij ;g lkfcr ugha gksrk gS] fd ;FkkfLFkfr ifj'kkafr dk;e j[kus vFkok lnkpj cuk, j[kus ds fy, vkjsih O;fDr cU/ki= fu"ikfnr djs rks eftLVsV vfHkys[k esa bl vk'k; dh izfof"V djsr gq,] ;fn vkjsih O;fDr dsoy ml tkWp ds iz;kstuksa ds gh fy, vfHkj{kk esa gS rks mls NksM+ nsxk vkSj ;fn vfHkj{kk esa ugha gS rks mls mUeksfpr dj nsxkA bl fo"k; esa fuEuor~ ekxZfunsZ'k fn;s tkrs gSa&

- bl /kkjk ds v/khu iznRr 'kfDr;kj U;kf;d gSa vkSj mudk iz;ksx U;kf;d :i ls gh gksuk pkfg, vFkkZr 118 ds v/khu vkns'k ikfjr djus ds fy, /kkjk&111] 112 o 116 esa fofgr izfdz;k dk vuqiky fd;k tkuk rFkk xq.kkoxq.k ij ikfjr vafre vkns'k esa ldkj.k vfHkdFku fy[kk tkuk vko';d gSA
- eftLVsV dks i'pkr~orhZ ?kVukvksa dks laKku esa ysus dh 'kfDr izklr gSA ;fn vfHkys[k ij miyC/k lkexzh ls nf'kZr gksrk gS fd ;|fi ,d le; 'kkafr Hkax gksus dh IEHkkouk Fkh rFkkfi~ i'pkr~orhZ ?kVukvksa ls 'kkafrHkax dk [krjk leklr gks x;k gS] rks U;k;ky; dk;Zokgh leklr dj ldrk gS vkSj mu O;fDr;ksa dks mUeksfpr dj ldrk gS ftuds fo:) dk;Zokgh dh xbZ gSA

7&/kkjk&120&cU/ki= dh vUroZLrq,a ,oa leigj.k (forfeiture) ds fo"k; esa izko/kku ,oa fn'kk&funsZ'k&

vkjsih O;fDr }kjk fu"ikfnr fd;k tkus okyk cU/ki= mls] ;FkkfLFkfr ifj'kkafr] dk;e j[kus ;k lnkpjkh jgus ds fy, vkc) djsxk vkSj ckn dh n'kk esa dkjokl ls n.Muh; dks vij/k djuk ;k djus dk iz;Ru ;k nq"iszj.k djuk] ¼pkgs og dgha Hkh fd;k tk,½ cU/ki= dk Hkax gSA

mDr fLFkfr esa eftLVsV dks cU/ki= leiâr (forfeit) djus dk vf/kdkj izklr gSA ,sls esa eftLVsV ls fuEu lko/kkfu;kj visf{kr gSa&

- ifj'kkafr dk;e j[kus ds fy, cU/ki= fu"ikfnr djus okys O;fDr ds fo:) leigj.k dh dk;Zokgh dsoy ,sls vij/k/ksa dks dkfjr djus ls gks ldrh gS ftlds ftlds ifj.kke Lo:i ifj'kkafr Hkax dh IEHkkouk gSA
- lnkpjkh cuk jgus ds fy, fu"ikfnr cU/ki= dks fu"iknh }kjk fdLh Hkh vij/k/k dks djus ij leiâr fd;k tk ldrk gSA bls fy, ;g vko';d ugha gS fd vij/k/k ,slk gks tks ifj'kkafr Hkax djus ds IEHkko; dh dksfV esa vkrk gksA
- cU/ki= ds Hkax ij leigj.k dh dk;Zokgh /kkjk&446 esa mfYyf[kr izko/kkuksa ds vuqlkj dh tk;sxhA
- ;fn fdLh O;fDr dk ifj'kkafr dk;e j[kus ds fy, fu"ikfnr cU/ki=] ifj'kkafr dks Hkax djus okys vij/k/k esa nks"kfl) gksus ij leiâr gksrk gS rks mls cU/ki=

dh 'ks" k vuoflr vof/k ds fy, dkjxkj esa ugh Hkstk tk ldrk] mlls dsoy leiâr cU/ki= dh jde olwy dh tk ldrh gSA

- cU/ki= dks leiâr djus rFkk jde olwyh ds vkns'k ls iwoZ cU/ki= ds fu"iknh dks dkj.k crkvks uksfVI fn;k tkuk vko';d gSA
- leigj.k dh dk;Zokgh iz/kku rFkk mlds izfrHkw] nksuksa ij ykxw gksxhA

8&/kkjk&121&izfrHkqvksa dks vLohdkj djus dh 'kfDr&

bl fo" k; esa n.M izfdz;k lafgrk esa eq[; izko/kku fuEuor~ gSa&

¼1½ eftLVªsV fdlh is'k fd, x, izfrHkw dks Lohdkj djus ls bUdkj dj ldrk gS ;k vius }kjk] ;k vius iwoZorhZ }kjk] bl v/;k; ds v/khu igys Lohdkj fd, x, fdlh izfrHkw dks bl vk/kkj ij vLohdkj dj ldrk gS fd ,slk izfrHkw cU/ki= ds iz;kstuksa ds fy, vuqi;qDr gS%& ijUrq fdlh ,sls izfrHkw dks bl izdkj Lohdkj djus ls bUdkj djus ;k mls vLohdkj djus ds igys og izfrHkw dh mi;qDrrk ds ckjs esa ;k rks Lo;a 'kiFk ij tkWp djsxk ;k vius v/khuLFk eftLVªsV ls ,slh tkWap vkSj mlds ckjs esa fjiksVZ djok,xkA

¼2½ ,slk eftLVªsV tkWp djus ds igys izfrHkw dks vkSj ,sls O;fDr dks] ftls og izfrHkw is'k fd;k gS] mfpr lwpuk nsxk vkSj tkWp djus esa vius lkeus fn, x, lk{; ds lkj dks vfHkfyf[kr djsxkA

¼3½ ;fn eftLVªsV dks vius le{k ;k mi/kkj ¼1½ ds v/khu izfrfu;qDr eftLVªsV ds le{k ,sls fn, x, lk{; ij vkSj ,sls eftLVªsV dh fjiksVZ ij ¼;fn dksbZ gks½] fopkj djus ds i'pkr~ lek/kku gks tkrk gS fd og izfrHkw cU/ki= ds iz;kstuksa ds fy, vuqi;qDr O;fDr gS rks og ml izfrHkw dks] ;FkkfLFkfr] Lohdkj djus ls bUdkj ;k mls vLohdkj djus dk vkns'k djsxk vkSj ,slk djus ds fy, vius dkj.k vfHkfyf[kr djsxk%& ijUrq fdlh izfrHkw dks] tks igys Lohdkj fd;k tk pqdk gS]

vLohdkj djus dk vkns'k nsus ds igys eftLVªsV viuk leu ;k okkj.V] ftls og Bhd le>s] tkjh djsxk vkSj ml O;fDr dks] ftlds fy, izfrHkw vkc) gS] vius le{k gkftj djok,xk ;k cqyok,xkA bl fo" k; esa fuEuor~ fn'kk&funsZ'k fn, tkrs gSa&

- eftLVªsV /kkjk&121 ds rgr izLqr izfrHkwfr;ksa dks ukeatwj dj ldrk gS] fdUrq mls ,slk rHkh djuk pkfg,] tcfd mlus vko';d tkWp dj yh gks vkSj ukeatwj djus ds vius dkj.kksa vkSj lk{; dks vfHkfyf[kr dj fy;k gksA
- fdlh izfrHkw dks dsoy iqfyl fjiksVZ ds vk/kkj ij rFkk fcuk tkWp fd, ukeatwj djuk U;k;ksfpr ugha gSA
- izfrHkw dh mi;qDrrk dk iz'u eftLVªsV }kjk U;kf;d tkWp ds ckn r; fd;k tkuk pkfg, dsoy ;g rF; fd izfrHkw vfHk;qDr ij i;kZIr fu;a=.k ugha j[k ik;sxk] Lo;a esa fdlh HkwfrHkw dks vLohd`r djus dk dkj.k ugha gksuk pkfg,A
- cU/ki= ds iz;kstu ds fy, fdlh izfrHkw dh vuqi;qDrrk dsoy foRrh; vuqi;qDrrk rd gh lhfer ugha gksuh pkfg,A

9&/kkjk&122&izfrHkwfr nsus esa O;fDrdze gksus ij dkjokl&

bl fo" k; esa n.M izfdz;k lafgrk esa eq[; izko/kku fuEuor~ gSa&

¼1½ ¼d½ ;fn dksbZ O;fDr] ftls /kkjk 106 ;k 117 ds v/khu izfrHkw nsus ds fy, vkns'k fn;k x;k gS] ,slh izfrHkwfr ml rkjh[k dks ;k ml rkjh[k ds iwoZ] ftlds og vof/k] ftlds fy, ,slh izfrHkwfr nh tkuh gS] izkjEHk gksrh gS] ugha nsrk gS] rks

og blesa bls i'pkr~ Bhd vkxs of.kZr n'kk ds flok; dkjxkj esa Hkst fn;k tk,xk vFkok ;fn og igys ls gh dkjxkj esa gS rks og dkjxkj esa rd rd fu:) j[kk tk;sxk tc rd

,slh vof/k lekIr u gks tk, ;k tc rd ,slh vof/k ds Hkhrj og ml U;k;ky; ;k eftLVs^aV dks izfrHkwfr ns ns ftlus mldh vis{kk djus okyk vkns'k fn;k FkkA

$\frac{1}{4}[k\frac{1}{2}$;fn fdlh O;fDr }kjk /kkjk 117 ds v/khu eftLVs^aV ds vkns'k ds vuqlj.k esa ifj'kkfUr cuk, j[kus ds fy, izfrHkwvksa lfgr ;k jfgr cU/ki= fu"ikfnr dj fn, tkus ds i'pkr~] mlds ckjs esa ,sls eftLVs^aV ;k mlds in&mRrjorhZ dks lek/kkuizn :i eas ;g lkfcr dj fn;k tkrk gS fd mlus cU/ki= dk Hkax fd;k gS rks ,slk eftLVs^aV ;k in&mRrjorhZ] ,sls lcwr ds vk/kkjksa dks ys[kc) djus ds i'pkr~ vkns'k dj ldrk gS fd ml O;fDr dks fxj¶rkj fd;k tk, vkSj cU/ki= dh vof/k dh lekflr rd dkjxkj esa fu:) j[kk tk, rFkk ,slk vkns'k ,sls fdlh vU; n.M ;k leigj.k ij izfrdwy izHkko ugha Mkysxk ftlls fd mDr fof/k ds vuqlj nkf;Rok/khu gksA

$\frac{1}{2}\frac{1}{2}$ tc ,sls O;fDr dks ,d o"kZ ls vf/kd dh vof/k ds fy, izfrHkw nsus dk vkns'k eftLVs^aV }kjk fn;k x;k gS] rc ;fn ,slk O;fDr

;FkkiwoksZDr izfrHkwfr ugha nsrk rks og eftLVs^aV ;g funsZ'k nsrs gq, okj.V tkjh djsxk fd las'ku U;k;ky; dk vkns'k gksus rd] og O;fDr dkjxkj esa fu:) j[kk tk, vkSj og dk;Zokgh lqfo/kkuqlkj 'kh?kz ,sls U;k;ky; ds le{k j[kh tk,sxhA

$\frac{1}{4}\frac{3}{2}$,slk U;k;ky; ,slh dk;Zokgh dh ijh{kk djus ds vkSj ml eftLVs^aV ls fdlh vkSj bfRryk ;k lk{; dh] ftls og vko';d le>s] vis{kk djus ds i'pkr~ vkSj lEc) O;fDr dks lqus tkus dk mfpr volj nsus ds i'pkr~ ekeys esa ,sls vkns'k ikfjr dj ldrk gS tks og Bhd le>sA

ijUrq og vof/k $\frac{1}{4}$;fn dksbZ gks $\frac{1}{2}$ ftlds fy, dksbZ O;fDr izfrHkwfr nsus esa vlQy jgus ds dkj.k dkjokflr fd;k tkrk gS] rhu o"kZ ls vf/kd dh u gksxhA

;*|* fi mDr izko/kku ,oa blesa mYysf[kr izfdz;k lqLi"V gS rFkkfi orZeku ifjn`'; esa bls lijhd`r djrs gq, fuEuor~ fn'kk funsZ'k fuxZr fd, tk jgs gSa %&

➤ tc eftLVs^aV vkjksfir O;fDr dks izfrHkwfr nkf[ky djus dk vkns'k nsrk gS rks blesa fuEu rhu rF;ksa dk lekos'ku vfuok;Zr% fd;k tkuk pkfg,&

$\frac{1}{4}d\frac{1}{2}$ izfrHkwfr dh vof/kA

$\frac{1}{4}[k\frac{1}{2}$ vof/k ds izkjEHk gksus dh rkjh[kA

$\frac{1}{4}x\frac{1}{2}$ rkjh[k] tc rd izfrHkwfr nh tkuh gSA

;fn ,sls vkns'k esa vof/k izkjEHk gksus dh rkjh[k fofufnZ"V ugha dh x;h gS rks ,slh =qfV dks ,d u;k vkns'k ikfjr djds lq/kkj tk ldrk gSA

➤ /kkjk&122 dsoy mlh fLFkfr esa ykxw gksrh gS tc vafre fu;r rkjh[k rd izfrHkwfr nkf[ky ugha dh x;h gSA ;fn izfrHkwfr nkf[ky dj nh x;h gS rks ;g /kkjk ykxw ugha gksxhA

➤ ;fn dksbZ O;fDr] ftlds fo:) dkjokl dks vkns'k fn;k x;k gS] izfrHkwfr nkf[ky dj nsrk rks mls rqjUr fjk dj fn;k tk,xkA

➤ /kkjk&107 ds v/khu ifj'kkafr dk;e j[kus ds fy, rFkk /kkjk&108 ds v/khu lnkpj ds fy, izfrHkwfr nsus esa vlQyrk ds dkj.k dkjokl lnSo lknk $\frac{1}{4}$ Je ugha $\frac{1}{2}$ gksxk] fdUrq tgkWa dk;Zokgh /kkjk&109 ;k /kkjk&110 ds v/khu dh x;h gS] ogkWa dkjokl izR;sd ekeys esa lEcU/kr eftLVs^aV

;k U;k;ky; ds Lofosdkuqlkj lknk ;k dBksj gksxkA ¼;| fi dBksj dkjokl
dk vkns'k nsuk eftLVsªV ds Lofosd ij fuHkZj gS] fdUrq mls vius
vkns'k esa dkj.k nsus pkfg, fd og dBksj dkjokl dk vkns'k D;ksa dj jgk
gS½

10&/kkjk&123&¼izfrHkwfr nsus esa vlQyrk ds dkj.k dkjokflr O;fDr;ksa dks
NksM+us dh 'kfDr½ ds fo"k; esa izko/kku ,oa fn'kk&funsZ'k& bls vUrxZr
/kkjk 117 ds v/khu fdlh dk;Ziky eftLVsªV }kjk ikfjr fdlh
vkns'k ds ekeys esa ftyk eftLVsªV ;k fdlh vU; ekeys esa eq[; U;kf;d eftLVsªV
dks vf/kdkj fn;k x;k gS fd og izfrHkwfr nsus esa vlQy jgus ds dkj.k dkjokflr
O;fDr dks mUeksfpr fd;s tkus ;k izfrHkwfr dh jde@izfrHkqvksa dh la[k;
@vof/k dks] ftlds fy, izfrHkwfr dh vis{kk dh x;h gS] de fd;s tkus gsrq vkns'k
ns ldrk gSA

;g iw.kZr% eq[; U;kf;d eftLVsªV vFkok ftyk eftLVsªV ds Lofosd ij gS fd
og fdu ifjLFkfr;ksa esa bl /kkjk ds v/khu dk;Zokgh djsA

11&/kkjk&124 ¼cU/ki= dh 'ks"k vof/k ds fy, cU/ki=½ ds fo"k; eas aizko/kku
,oa fn'kk&funsZ'k&

¼1½ tc og O;fDr] ftldh gkftjh ds fy, /kkjk 121 dh mi/kkjk ¼3½ ds ijUrqd ds
v/khu ;k /kkjk 123 dh mi/kkjk ¼10½ ds v/khu leu ;k okj.V tkjh fd;k
x;k gS] eftLVsªV ;k U;k;ky; ds le{k gkftj gksrk gS ;k yk;k ykrk gS rc
og eftLVsªV ;k U;k;ky; ,sls O;fDr }kjk fu"ikfnr cU/ki= dks jn~n dj
nsxk vkSj ml O;fDr dks ,sls cU/ki= dh vof/k ds 'ks"k Hkkx ds fy,
mlh HkkWfr dh] tSlh ewy izfrHkwfr Fkh] ubZ izfrHkwfr nsus ds
vkns'k nsxkA

¼2½ ,slk izR;sd vkns'k /kkjk&120 ls /kkjk&123 rd dh /kkjvkksa ds ¼ftlds
vUrxZr

;s nksuksa /kkjk,Wa Hkh gaSA½ iz;kstuksa ds fy,] ;FkkfLFkfr]
/kkjk&106 ;k /kkjk&117 ds v/khu fn;k x;k vkns'k le>k tk,xkA

12& Hkkjr ds lafo/kku ds vuqPNsn&21 dk mYya?ku djrs gq;s fdlh O;fDr
dh voS/k fgjklr fd;s tkus ds fy, mRrjnk;h vf/kdkjh ds fo:) n.MkRed dk;Zokgh
,oa ihfM+r O;fDr dks eqvkots ds Hkqxrku ds laca/k esa fn'kk&funsZ'k&

¼1½ Hkkjr ds lafo/kku ds vuqPNsn&21 dk mYya?ku djrs gq;s fdlh O;fDr dh
voS/k fgjklr fd;s tkus ds fy, vuq'kklfud izkf/kdkjh }kjk tkap esa nks"kh ik;s
tkus ij mRrjnk;h vf/kdkjh ds fo:) m0iz0 ljdkjh lsod ¼vuq'kklu ,oa vihy½
fu;ekoyh] 1999] fn vky bafM;k lfoZlst ¼fMfllyhu ,aM vihy½ :YI]
1969 ,oa m0iz0 v/khuLFk Js.kh ds iqfyl vf/kdkfj;ksa dh ¼n.M vkSj vihy½
fu;ekoyh] 1991 ¼;Fkk la'kksf/kr½ esa laxr fu;eksa ds
varxZr n.MkRed dk;Zokgh dh tk;sxhA

¼2½ vuq'kklfud izkf/kdkjh }kjk viuh tkap fjiksVZ 03 ekg esa vFkok laxr
fu;ekoyh esa ;Fkk mfYyf[kr le;kuqlkj izLrq dh tk;sxhA

¼3½ ;fn fdlh ukxfjd dh voS/k :i ls fgjklr izekf.kr ik;h tkrh gS rks ihfM+r O;fDr
dks :0&25]000@ dh /kujkf'k dk Hkqxrku eqvkots ds :i esa fd;k tk;sxkA

bl lEcU/k esa leLr ftyk eftLVs^aV] mlds v/khuLFk leLr dk;Zikyd
eftLVs^aV~l rFkk fo'ks"k dk;Zikyd eftLVs^aV~l ls ;g vis{kk dh tkrh gS fd n.M
izfØ;k lafgrk esa mUgsa iznRr dh x;h 'kfDr;kWa] muds {ks=kf/kdkj esa 'kkafr
O;oLFkk ,oa yksd iz'kkafr cuk;s j[kus ds fy, gSA vr% budk ikyu lnSo
xq.k&nks"k ds vk/kkj ij ;qfDr;qDr U;kf;d eflr"d dk iz;ksx djrs gq,] fof/k ,oa
fu/kkZfjr izfØ;k ds vuqlkj fd;k tk,] rkfd vketu dks lafo/kku ls izklr ekSfyd
vf/kdkj lajf{kr jgsaA

d`i;k mDr fn'kk&funZs'kksa dk l[rh ls vuqikyu lqfu'pr fd;k tk,A

g0viBuh;

¼vough'k ddekj voLFkh½

vij eq[; lfpoA

18. In the case of Lucknow Development Authority Vs. M.K. Gupta (1994) 1 SCC 243 (Paras 8, 10, 11 and 12 Hon'ble Supreme Court observed that under our Constitution Sovereignty vest in the people. Every limb of the constitutional machinery is obliged to be people oriented. No functionary in exercise of statutory power can claim immunity, except to the extent protected by the statute itself. Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour before authorities created under the statute like the commission or the courts entrusted with responsibility of maintaining the rule of law.

19. An ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities. The servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service. A public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must

suffer it. But when it arises due to arbitrary or capricious behaviour then it loses its individual character and assumes social significance. Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous. Nothing is more damaging than the feeling of helplessness. An ordinary citizen instead of complaining and fighting succumbs to the pressure of undesirable functioning in offices instead of standing against it. Therefore, the award of compensation for harassment by public authorities not only compensates the individual, satisfies him personally but helps in curing social evil.

20. In a modern society no authority can arrogate to itself the power to act in a manner which is arbitrary. It is unfortunate that matters which require immediate attention linger on and the man in the street is made to run from one end to other with no result. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match the inaction in public oriented departments gets frustrated which erodes the credibility in the system. Where it is found that exercise of discretion was mala fide and the complainant is entitled to compensation for mental and physical harassment then the officer can no more claim to be under protective cover. The test of permissive form of grant is over. It is now imperative and implicit in the exercise of power that it should be for the sake of society. It is the tax payers' money which is paid for inaction of those who are entrusted under the Act to discharge their duties in accordance with law.
21. Once it is found by the competent authority that a complainant is entitled for compensation for inaction of those who are

entrusted under the Act to discharge their duties in accordance with law, then payment of the amount may be made to the complainant from the public fund immediately but it may be recovered from those who are found responsible for such unparadonable behaviour. This legal position is reflected from the law laid down by the Apex Court in Lucknow Development Authority's case (supra). In the said case it was further observed by the Apex Court that the Administrative law of accountability of public authorities or their arbitrary and even ultra vires actions has taken many strides and it is now accepted both by this Court and English Courts that State is liable to compensate for loss or injury suffered by a citizen due to arbitrary action of its employees.

22. The legal principles as enumerated in foregoing paragraphs Nos. 18, 19, 20 & 21 also finds support of the law laid down by Hon'ble Courts in the case of Lucknow Development Authority (supra); Jay Laxmi Salt Works (P) Ltd. Vs. State of Gujarat (1994) 4 SCC 1; N. Nagendra Rao & Co. Vs. State of A.P. (1994) 6 SCC 205; State of Maharashtra and others Vs. Kanchanmala Vijaysing Shirke and others (1995) 5 SCC 659; Chief Conservator of Forests and another (1996) 2 SCC 293; S.P. Goel vs Collector Of Stamps, Delhi (1996) 1 SCC 573; Common Cause A. Registered Society Vs. Union of India JT 1999 (5) SC 237: AIR 1999 SC 2979; Shiv Sagar Tiwari Vs. Union of India and others (1996) 6 SCC 558; Chairman, Railway Board and others Vs. Chandrima Das (Mrs.) and others (2000) 2 SCC 465; State of A.P. Vs. Challa Ramkrishna Reddy and others (2000) 5 SCC 712; Research Foundation for Science (10) Vs. Union of India (2005) 13 SCC 659; M.C. Mehta Vs. Union of India and Others (2006) 3 SCC 399; Union of India Vs. Prabhakaran Vijaya Kumar and others (2008) 9 SCC 527; Action Committee, Unaided Private Schools and

others Vs. Director of Education, Delhi and others (2009) 10 SCC; Delhi Jal Board Vs. National Campaign for Dignity and Rights of Sewerage and Allied Workers and others (2011) 8 SCC 568; Municipal Corporation of Delhi, Delhi Vs. Uphaar Tragedy Victims Association and others (2011) 14 SCC 481.

Action by the State Government

23. We record our appreciation for the State Government to take the aforequoted policy decision dated 23.03.2021 for payment of compensation of Rs.25,000/- for illegal detention of any citizen by any Officer of the State Government and initiation of disciplinary proceedings against such officer. Since the State Government itself has taken a policy decision and has paid compensation to the petitioners herein, therefore, no further direction for payment of compensation is required to be issued in the present writ petition.

24. In view of the aforesaid, this writ petition is disposed of with the following directions :-

(i) The State Government shall ensure that the provisions of the Cr.P.C. as referred in the policy decision dated 23.03.2021 are strictly followed/observed by all the concerned officers.

(ii) The State Government shall further ensure that paragraph 12 of the policy decision dated 23.03.2021 is strictly implemented, which at the cost of repetition is reproduced below:

¼1½ Hkkjr ds lafo/kku ds vuqPNsn&21 dk mYya?ku djrs gq;s fdlh O;fDr dh voS/k fgjklr fd;s tkus ds fy, vuq'kkIfud izkf/kdkjh }kjk tkap esa nks"kh ik;s tkus ij mRrjnk;h vf/kdkjh ds fo:) m0iz0 ljdkjh lsod ¼vuq'kklu ,oa vihy½ fu;ekoyh] 1999] fn vky bafM;k lfoZlst ¼fMflyhu ,aM vihy½ :Yl] 1969 ,oa m0iz0 v/khuLFk Js.kh ds iqfyl vf/kdkfj;ksa dh ¼n.M vkSj vihy½ fu;ekoyh] 1991 ¼;Fkk la'kksf/kr½ esa laxr fu;eksa ds varxZr n.MkRed dk;Zokgh dh tk;sxhA

¼2½ vuq'kklfud izkf/kdkjh }kjk viuh tkap fjiksVZ 03 ekg esa vFkok laxr
fu;ekoyh esa ;Fkk mfYyf[kr le;kuqlkj izLrqr dh tk;sxA

¼3½ ;fn fdlh ukxfjd dh voS/k :i ls fgjklr izekf.kr ik;h tkrh gS rks ihfM+r O;fDr
dks :0&25]000@ dh /kujkf'k dk Hkqxrku eqvkots ds :i esa fd;k tk;sxA

(iii) The State Government shall publish Para 12 of its Policy decision dated 23.03.2021 in all largely circulated National Level Newspaper having circulation in the State of Uttar Pradesh and shall also display it on display board at prominent places within public view, in all blocks, Tehsil Headquarters, Police Stations and in campus of District Collectorate in the whole of the State of Uttar Pradesh.

(iv) Copy of this order shall be sent by the State Government to all District level and Tehsil level Bar Associations in the whole of the State of Uttar Pradesh.

25. Let a copy of this order be sent by the Registrar General of this Court to the Chief Secretary of the State of Uttar Pradesh and the Additional Chief Secretary, Home, for strict compliance.

Order Date :- 11.06.2021/vkg