
(1990) 03 KL CK 0045
In the High Court Of Kerala
Case No : W.A. No. 189 of 1990

Pathanapurum Taluk P.W.C. and others	APPELLANT
Vs	
Salim and others	RESPONDENT

Date of Decision : 15-03-1990

Acts Referred:

Citation : (1991) 1 KLJ 390

Hon'ble Judges : K.S. Paripoornan, J;D.J. Jagannadha Raju, J

Bench : Division Bench

Advocate : K. Balakrishnan, for the Appellant; M.N. Sukumaran Nair and Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Jagannadha Raju, J.—This appeal is filed by respondents 4, 5, 6 and 8 in O.P. No. 1011 of 1990 - U. The dispute relates to "labhavihitham" said to be a customary payment made at the time of cutting the rubber trees and removing them. It is the claim of the appellants - Trade Union that they are entitled to be paid "labhavihitham" as part of a settlement which is said to be in force. They claimed that unless the "labhavihitham" is paid, as per the settlement, they would not allow the petitioner (purchaser of the trees) to cut and remove the rubber trees. Considering the defiant attitude of the trade unions, the purchaser of the trees Mr. S. Salim filed O.P. No. 1011 of 1990 - U. seeking-police protection. The learned Single Judge gave notice to, the. Government Pleader and obtained a detailed report from the 11th respondent in the O.P.-- The Regional Joint Labour Commissioner--and then came, to the conclusion that this is a fit case, where the police protection sought for should be granted The operative portion of the single Judge's order reads as follows:

.....Consequently the petitioner is entitled to have the trees cut and removed from the Estate belonging to the 10th respondent

. If any obstruction is caused to the above right of the petitioner by respondents

4 to 9, their members or supporters, that obstruction will have to be removed by respondents 1 to 3 by taking effective and adequate steps.

2. In this appeal, the appellants' counsel Shri K. Balakrishnan contends that "labhavihitham" is a customary payment and the trade unions are entitled to the amount by virtue of both a customary practice and also by way of settlements. He claims that non-payment of this money amounts to variation of conditions of service. Hence the police protection should not have been granted, unless the "labhavihitham" is paid to the present appellants.

3. If we examine the contentions of the appellants' counsel, we find that the basis of the claim is on different footings. If it is a claim based upon a settlement, it is found that the petitioner in the O.P.S. Salim is not a party to the settlement. The appellants cannot proceed against the petitioner (the purchaser of timber) on the basis of settlements. If it is claimed that it is a money payable by the employer, then it is open to the appellants to file a suit against the employer. If the appellants claim that it is a money which is payable as a customary payment or that it is part of the conditions of service, they can only raise an industrial dispute under the Industrial Disputes Act. But, under no circumstances, are the appellants entitled to claim the amount from the purchaser of the timber.

4. Reading the entire record, it is evident that the trade unions (Appellants herein) are taking the law into their own hands and applying pressure by obstructing the cutting and removal of rubber trees from the estate, to extract the payment of "labhavihitham". It is a clear case where muscle power is being used to collect the amount which they claim as legitimately payable to them. A party, who is entitled to a monetary claim, is not entitled to take the law into his own hands. We are living in a civilised society and not during times where the law of the jungle prevails. If the trade unions feel that they are entitled to the amount, they are at liberty to file a suit against the employer, the owner of the estate who sold the trees. If they wish to claim the amount on the basis of industrial dispute, they are entitled to seek relief in accordance with the procedure contemplated under the Industrial Disputes Act. But, under no circumstances, they are entitled to exert pressure or resort to violence to prevent the purchaser from taking the timber. They are not entitled to cause any obstruction or impediment to the purchaser to cut the trees and remove them from the estate. The purchaser is perfectly justified, on the facts of this case, in approaching this Court and seeking police protection. The learned single Judge is perfectly justified in granting the police protection, and in our view, the learned single Judge has been very restrained and circumspect in passing the operative portion of the order. We do not find any justification to interfere with the order of the learned single Judge. In the result, the writ appeal is dismissed. The appellants are free to seek such remedies as are open to them under the law to obtain the "labhavihitham" which they claim that they are entitled to.