

# Silent Valley Case: An Ecological Assessment

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Lack of proper appreciation of environmental information may often lead to decisions going against the interest of the general public. Consequently, priority is given to developmental activities aimed at short term benefits over conservation oriented actions with a long term perspective of sustainable benefits. It is this unfortunate position that prompted the author to evaluate the judgment pronounced by the Kerala High Court on 2nd January 1980 in *Society for Protection of Silent Valley v. Union of India and others*.<sup>1</sup> The judgment was not reported. Hence I have given an extract in the appendix. Petitions were filed seeking a writ forbidding the State of Kerala from proceeding to construct a hydro-electric project at Silent Valley.<sup>2</sup> This venture

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1. O.P. Nos. 2949 and 3025 of 1979. The Petitioners were:- (1) Society for Protection of Silent Valley (Regd.), represented by its Executive Secretary - R. K. Ramesh, 2|4A, Jayanthi Buildings, Calicut-1 and (2) Mr. M. K. N. Potty, Madathil, Kathirampathy, Agaly P.O. Respondents were:- (1) Union of India, represented by Secretary to Government, Ministry of Agriculture and Irrigation (Department of Agriculture) New Delhi, (2) State of Kerala represented by Chief Secretary to Government, Trivandrum and (3) Kerala Electricity Board, Trivandrum.
2. The petition pointed out that Silent Valley in the District of Palghat, contained one of India's largest tropical evergreen forests and is the only vestige of virgin forest of the Western Ghats. It is estimated to have a continuous record of not less than 50 million years of evolutionary history, with diverse and complex flora and

(f. n. contd.)

was represented as fraught with adverse consequences deleterious to the environment. Experts including scientists attached to the Department of Science and Technology, Government of India had warned against the proposed construction. Environmentalists, scientists and conservation societies in India and abroad expressed great concern and joined the chorus of denunciation of the Silent Valley Hydro-Electric Project called SVHEP.

The adverse effects from the conversion of Silent Valley into a hydro-electric project, as listed in the judgment are,

- i) the deforestation was bound to affect the climatic conditions in the State and even outside by depriving the State of its legitimate share of rain during the monsoon,
- ii) the preservation of the forests was needed for conducting research in medicine, pest control, breeding of economic plants and variety of purposes and
- iii) the deforestation was bound to interfere with the balance of nature.

The petition had provided proof from available scientific, socio-economic and technical studies on the matter.<sup>3</sup> The judgment readily admitted that 'project like the hydro-electric project, if sanctioned and set up would have its impact on environment'. However, the spirit of the judgment totally overlooks all those considerations and seems to have been guided by unscientific and anti-conservational arguments advanced by the State Govern-

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fauna. It is a unique vegetable food resource which contains mammals and birds in the valley. A number of endangered plants and animals live there. The forests perform very many important functions. They regulate water supply to the planes by retaining rain water in the soil and releasing it slowly down, maintaining the hydrological balance, averting floods and droughts in the planes. Soil erosion is prevented and the climatic condition of the whole area is regulated by the forests.

3. A techno-economic and socio-political assessment of the SVHEP published by the *Kerala Sastra Sahitya Parishad* (1979) was produced as exhibit P5. Copies of the letters sent by eminent scientists and resolutions adopted by international and national bodies also were produced.

ment. The grounds on which the judgment was pronounced and the petitions were rejected are the following:

1. The question of ecological upset likely to result from the execution of the project was readily considered.
2. The location is ideal for a hydro-electric project, which would produce considerable amount of power at the cheapest rate.
3. The Legislature of Kerala was of the unanimous view that the project was of crucial importance to the State and a resolution was unanimously adopted on 18-8-1978 expressing anxiety on the continuing delay, besides an all-party delegation from Kerala to the Prime Minister on 7-4-1978.
4. The action taken to implement the seventeen safe-guards recommended by the Task Force appointed by the National Committee on Environmental Planning and Co-ordination (NCEPC) shows clearly that the Governments' mind was addressed to the question of the ecological aspects involved in the execution of the project and its impact upon the same.

The judgment relied more on governmental position than on any other considerations. The Court went on,<sup>3a</sup>

“But in this region we cannot substitute our judgment for that of the Government, on the question as to whether a national asset is to be more conveniently utilised as a hydro-electric project with prospects of greater power generation or retained in its pristine glory or preservation of forests and wild-life, prevention of soil erosion, and avoidance of other deleterious effects on the community”.

This quotation itself is sufficient testimony for the very low priority of environmental issues in their minds. The sole purpose of approaching the High Court was to get justice in a case where the petitioners were convinced that the Government

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3a. Para 4 of the Judgment (See the appendix).

did not at all consider the question of ecological imbalance likely to result from the execution of the project and the Government considered to utilise such a national asset as a hydro-electric project rather than retain its pristine glory, to preserve forests and wildlife, to prevent soil erosion and to avoid other deleterious effects on the community. Coming to know of the move to build a hydro-electric project in the Silent Valley, many persons genuinely interested in the well being of the country and the projection of the genetic heritage, represented before the authorities the injustice that would result from the proposed project. A detailed representation<sup>4</sup> was made before the Chief Minister of the Government of Kerala by a number of scientists and other prominent citizens. The State Government turned down all those. It exhibited its ecological illiteracy by submitting in the counter-affidavit that *the forests do not avert floods and droughts in the planes*. Under these circumstances one cannot say that the question of ecological upset likely to result from the execution of the project was properly considered by the Government.

It is interesting to note what the chairman of the Task Force appointed by NCEPC to examine the project had said about the implementation of the safeguards. He wrote to the Government of Kerala that the Task Force was completely mistaken in recommending the safeguards. According to him, the safeguards will not prevent damage to this fragile ecosystem.<sup>5</sup> He clarified the real position that the Task Force had

4. Exhibit P2, a representation signed by 35 scientists, 40 professors and research scholars, 150 post-graduate students of ecology and 180 citizens submitted to the Chief Minister on 26th February, 1978. A representation was submitted by the first petitioner to the Chairman, Indian Board for Wildlife, pointing out the catastrophic effect of the SVHEP (Ext. P3). The National Committee for Environmental Planning and Co-ordination submitted a report in 1976 pointing out the specific reason for not proceeding with the project. Copies of some of the letters sent by eminent scientists and resolutions adopted by international and national bodies were produced as Ext. P4.

5. Letter by Mr. Zafar Futchally, the chairman to Mr. C. V. Swaminathan, Commissioner, Command Area Development and Special

taken: in view of its unique ecological character, Silent Valley should not be touched at all. The chairman was of the firm view that the monitoring committee appointed by the Kerala Government to implement the safeguards would achieve their objectives.

The petitions and eventual affidavits reveal that sufficient proof was provided to show that the petitioners were not against additional power generation in the State and were not opposing other projects which were under construction or those which had completed investigation. Sufficient technical information was also provided to show that Silent Valley Hydro-Electric Project (SVHEP) was neither essential nor unavoidable. The unique nature of the forests of Silent Valley, substantiated by the findings of experts, was also brought to the notice of the court. This was blindly opposed by the State which went to the extent of saying that "Silent Valley is like any other forest in the Western Ghats, regenerated naturally and artificially". But the same Government, while declaring Silent Valley a National Park later

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Secretary to Government, (Electricity and Agriculture) Trivandrum dated 19th October 1979. He said:

"As Chairman of this Task Force I was largely responsible for suggesting ecological safeguards for Silent Valley if Government felt that the SVHEP could not be *abandoned for any reason* (emphasis supplied). I have been considering the developments subsequent to this report and I feel that, I and the Task Force, were completely mistaken in recommending these safeguards.

These are my reasons:

- a) Safeguards will neither prevent the submergence of a very vital portion of this area nor prevent critical damage through large scale human interference with this fragile ecosystem. In fact, Silent Valley will be mutilated to the point that it no longer remotely resembles the valuable biotype it represents today.
- b) The recommendation of these safeguards has resulted in the negation of the Task Force's real position on the subject, namely, in view of its unique ecological character, Silent Valley should not be touched at all. It has only encouraged the Central and the State Governments to proceed with the project without considering viable alternatives.

I feel that the Ordinance legislising the safeguards, and the creation of a Monitoring Committee cannot possibly achieve their ostensible objectives".

said: "The area in question has a rich and unique heritage of rare and valuable flora and fauna requiring conservation and management for the benefit of the nation as a whole and posterity in general".<sup>6</sup> This shows how the State Government was hesitant to take up a definite stand on a matter of crucial importance.

The significance of conservation of forests and wildlife is not to be overemphasized. It is also known that SVHEP was not going to contribute much to the power requirements of the State. In such a situation it was ecologically unfair to pronounce a judgment that ratified the sacrifice of a national asset to be conveniently utilised as a hydro-electric project. This reminds one of Aldo Leopold who said, "Men too wise to tolerate hasty tinkering with our political constitution accept without a qualm the most radical amendment to our biotic constitution".<sup>7</sup>

## APPENDIX

EXTRACT FROM THE JUDGMENT BY HON'BLE MR. JUSTICE V. P. GOPALAN NAMBIAR IN THE SILENT VALLEY CASE

1. There is, in the Palghat District of this State, 45 Kilometres to the north of *Mannarghadu*, a stretch of forest, nearly 8952 Hectares in extent, known as the 'Silent Valley'. The name is apparently derived from the peace, quiet and serenity of the place. But, paradoxically enough, as was once remarked in the far past in the Madras Legislature, the valley has been creaking and squeaking loudly on many occasions. The present noise and bustle are over the hydro-electric project sought to be processed in this valley. These writ petitions, broadly stated, seek to forbid the State from proceeding with the project. As representatives of the arguments advanced, we may refer to O.P. No. 2949 of 1979. The Government of Kerala is proposing to deforest the Silent Valley and to construct a dam for processing a hydro-electric project for power generation and supply of electricity.

6. Kerala Gazette, Extra Ordinary, 26th December, 1980, Vol. XXV., No. 115.

7. Aldo Leopold (1941) as quoted in E.P. Odum, *Fundamentals of Ecology*, W. B. Saunders Co., (1971), p. 409.

It is said that the dam is to generate 120 M. Watts of power by 1985 (The learned Advocate General rated the power generation much higher, viz., at 240 M. Watts). This venture has been represented as fraught with adverse consequences deleterious to the public. Experts have warned against the proposed construction of the dam and processing of the project. Scientists and technologists have joined the chorus of denunciation of the project.

2. The adverse effects from the conversion of the Silent Valley into a hydro-electric project were listed thus: first, the deforestation was bound to affect the climatic conditions in the State and even outside, by depriving the State of its legitimate share of rain during the Monsoon; second, that the preservation of the forests was needed for conducting research in medicine, pest control, breeding of economic plants and a variety of purposes; and third that deforestation was bound to interfere with the balance of nature, as between the forest land on the one side and arable and other types of lands on the other.

3. The argument stressed that a project like the hydro-electric project, if sanctioned and set up, would have its impact on environment, and this has to be carefully considered. Copious citations were made from various treatises, reports, and publications, to show the importance of the environmental factor in industrial planning. The National Committee on Environmental Planning and Co-ordination had appointed a Task Force in 1976 for ecological planning of the Western Ghats. Ext. P10 is a Press Report in the *Mathrubhumi* dated 7th October, 1979 that the Prime Minister has demanded abandonment of the Silent Valley Project. Ext. P1 is a complimentary copy of the techno-economic and socio-political assessment of the project by a committee of scientists. The members are: M. K. Prasad, Biologist, Government College, Calicut; M. P. Parameswaran, Nuclear Engineer, formerly of the Bhabha Atomic Research Centre, Bombay; V. K. Damodaran, Electrical Engineer, Regional Engineering College, Calicut; K. N. Syamasundaran Nair, Agricultural Scientist-Economist, State Planning Board, Trivandrum and K. P. Kannan, Economist, Centre for Development Studies, Trivandrum. The Report has recorded that the views reflected are their individual opinions and not those of the institutions or

organisations they represent. At page 30 of the Report we get a reference to the need for preservation of the lion-tailed monkey to be found in this region, and which is threatened with extinction. The *Treatise on Environmental Law and Policy: Cases and Materials*, was referred to, and also the National Environment Policy Act 1969. Many other Reports of a similar nature and treatises and materials were referred to. Copies were filed as Exts. P1 to P17. The application to receive Exts. P2 to P17 was filed only in the course of arguments.

4. The learned Advocate-General stressed the fact that the Project was sanctioned on 11-4-1973—wide Ext. P1—by the Planning Commission, and that administrative sanction (Ext. R2) was given to it in 1976. The question of ecological upset likely to result from the execution of the project was raised. This was considered. Paragraph 4 of the counter-affidavit has detailed the nature of the project, and its potentialities and has stressed that the location is ideal for a hydro-electric project, which would produce considerable amount of power at the cheapest rate. Paragraph 5 refers to revised working plan and the details therein regarding the Silent Valley Reserve. Paragraph 20 of the counter-affidavit has referred to the report of the Task Force for sociological planning in the Western Ghats. It has recommended that policy decision should be taken on seventeen recommendations prior to commencing the project work, if the Government felt that the work cannot be abandoned for any reason. It is pointed out that the Legislature of Kerala was of the unanimous view that the project was of crucial importance to the State. A resolution was unanimously adopted on 22-8-1978 expressing anxiety on the continuing delay. An all-party delegation from Kerala visited the Prime Minister on 7-4-1978. The various steps and developments of a similar nature are detailed in paragraph 20. They show clearly that the Government's mind was addressed to the question of the ecological aspects involved in the execution of the project and its impact upon the same. We were taken through copious extracts from various works, reports and other materials regarding the tech-

nical feasibility of the project and the importance of ecological considerations in assessing the worth and utility of a proposed project. But in this region we cannot substitute our judgment for that of the Government, on the question as to whether a national asset is to be more conveniently utilised as a hydro-electric project with prospects of greater power generation, or retained in its pristine glory for preservation of forests and wild life, prevention of soil erosion, and avoidance of other deleterious effects on the community. The scope for interference with such policy decision of the Government, should, in the nature of things be limited. A wealth of material was cited and placed before us on the technical feasibility of the project and the impolitic decision to destroy the forest.

5. In O.P. No. 2949 of 1979 it was objected that the petitioner was a mere *pro bono publico*, having no *locus standi* to maintain the application. The decision in the *Rann of Cutch case* (A.I.R. 1969 S.C. 783 para 22) and *Praga Tools Corporation case* (A.I.R. 1969 S.C. 1306) were cited. We do not think it necessary to deal finally with this aspect of the case, as we are satisfied that on the merits the petition must fail.

6. Counsel for the petitioner stressed the national importance of forests as having been responsible for certain amendment in the Constitution. Reference was made to Article 48A of the Constitution where by the preservation of forests and wild life is one of the directive principles of State Policy. Article 49 was also stressed giving obligation to protect every monument or place or object of artistic or historic interest, declared by Parliament to be of national importance from destruction, removal etc.

7. Rich and worthy material of a variegated nature was placed before us in regard to the national policy and environmental considerations. We are by no means satisfied that these aspects have not been borne in mind by the Government in planning and processing the project. We are also not satisfied that the assessment of these considerations made by the Government and the policy decisions taken thereafter are liable to be

reviewed by this Court in these proceedings. Even if they be open to review no grounds for such review have been disclosed.

8. As against the argument that by Ext. P10 (equal to Ext. R4) the Prime Minister of India had recommended that the project should be abandoned, it was argued that the counter-affidavit of the State had detailed the necessity for more electricity for the State. With the rapidly changing needs and requirements of the State, it is not as if a veto once by the Prime Minister, or an advice from the same high source once to drop the project, will arrest its development for all time.

9. There was then an argument that the Silent Valley Project conflicts with the Wild Life Preservation Act. It was also argued that the petitioners have the legal right to breathe pure air and drink pure water etc; and that these would be vitally affected by the proposed deforestation of the Silent Valley. These were the arguments developed in O.P. No. 3025 of 1979. The protection of environment granted by various countries such as America, England etc., was stressed and reference was made to the Endangered Species Act 1973 and the National Environmental Policy Act 1969 in America, the Control of Pollution Act 1974, the Country Side Act 1968, and the Clean Air Act 1956 in England. The learned Advocate General relied on Article 37 that it shall be the duty of the State to apply the directive principles in making laws. He referred to Ext. R3 filed with the original counter-affidavit which shows the various reserved forests in the State. It was pointed out that there was no pleading as to environmental pollution or the danger resulting from the execution of the project. Administrative sanction was accorded to the project in 1973 before the 42nd Amendment and the work also started before the said amendment - vide counter-affidavit of the Electricity Board - Paragraph 8.

10. As for the danger of extinction of the lion-tailed monkey, the matter is dealt with in paragraph 8 of the counter-affidavit. We do not think it necessary to cover the entire gamut of the material - whether scientific, technical, technological or ecological - placed before us in great detail. It is not for us to evaluate these considerations again as against the evaluation

already done by the Government. It is enough to state that we are satisfied that the relevant matters have received attention before the Government decided to launch the project. There has been no non-advertence of the mind to the silent aspects of the project. We are not to substitute our opinion and notions on these matters for those of the Government.

We find no reason to interfere. We dismiss these applications with no order as to costs.

Mode of Citation [1984] C.U.L.R.