
(1993) 03 KL CK 0049

In the High Court Of Kerala

Case No : O.P. No"s. 752 and 2865 of 1992-N and 9741 and 8905 of 1992-I

Niyamavedi and

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 16-03-1993

Acts Referred:

Constitution of India, 1950 — Article 14
Forest (Conservation) Act, 1980 — Section 2
Land Acquisition Act, 1894 — Section 4, 6

Citation : AIR 1993 Ker 262

Hon'ble Judges : M.M. Pareed Pillay, J

Bench : Single Bench

Advocate : A.X. Varghese, H. Subhalakshmi, P. Parameswaran Nair, Premijit Nagendran and S.A. Nagendran, Counse, for the Appellant; Cyriac Joseph, A.A.G.-I, Kodoth Sreedharan, Central Govt. Standing Counsel, George Joseph, P. Balagangadhara Menon and K. Sreedharan, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Pareed Pillay, J.—Petitioner "Niyamavedi, Kal-vathy, Kochi" has filed O. P. 752/1992 challenging the action of the first respondent to establish a Biological Park in "Agasthyava-nam". The Original Petition has been filed as a public interest litigation.

2. Original Petitions 2865/1992,9741/ 1992 and 8905/1992 were also filed for identical reliefs. In O.P. 8905/1992 apart from similar contentions taken in the other Original Petitions there is an additional contentiop against the acquisition of petitioners" rubber plantation under the Land Acquisition Act.

3. Petitioners contend that the proposed project for Biological Park would result in denudation of forest in the State of Kerala, that it would amount to violation of Forest Conservation Act, that Central Government"s consent has not been obtained for the project and that if the project materialises it would pose threat to the environment and ecology. It is contended by them that the forest wealth

in the State is considerably depleted on account of the callous attitude of the Government and as there is likelihood of thousands of valuable trees being cut and removed under the guise of the project prompt judicial action is called for. According to the petitioners, the project report does not give details of what all things to be done preclude to the establishment of the Park and as no independent expert committee has considered the viability or feasibility of the project, any hasty steps in that regard have to be stopped. The State Committee on Science, Technology and Environment was not consulted before the first respondent chose this venture. With respect to the location of the project area an independent expert body should visit the place and submit a report. The project was not discussed at all before the Task Force. The 8th Five Year Plan and Task Force report on Forestry and Wildlife were not considered in the finalisation of the project report. Petitioners have a further contention that there are six Adivasi settlements having ancient civilisation in the Agasthyavanam and if the Biological Park becomes a fait accompli it would virtually result in their ouster from their abodes. According to them, Agasthyavanam is reputed for its flora and fauna of the rarest species, for its peculiar climate and the rain procured growth of 150 species of plants not seen anywhere else in the world and also for its extraordinary rich ever-green forest.

4. Construction of buildings in the Noyyar Wildlife Sanctuary is challenged by the petitioners on the ground that such construction would destroy the Agasthyamala and its environments which have been identified as "one of the biosphere reserves by International Agencies like International Union for Conservation of Nature (IUCN), an affiliate of the United Nations Environment Programme. According to the report of the Committee of the Botanical Survey of India, the Agasthyamala and its surrounding forest area have substantial natural vegetation cover forming probably the finest remaining example of tropical wet evergreen forests (rain forests) in the Western Ghats. Petitioners contend that construction of buildings is in violation of the provisions of the Forest Conservation Act and that the diversion of the forest area for non-forest purpose is illegal. Petitioners also attacked the project report on the ground that no steps are taken to accommodate the tribals, that the establishment of the Biological Park is against the directions issued by this Court in O. P. 4084 of 1986 and that the construction of administrative block, staff quarters and residential buildings for the tourists contravenes the Forest Conservation Act. It is asserted in O.P. 9741/1992 that places where quarters are proposed to be constructed are inside Neyyar Sanctuary area which is within the proposed Agasthyamala biosphere reserve.

5. Learned counsel appearing for the intervenor in O.P. 752/1992 argued that Ext. R-4(b) (Joint Director's communication) should not have been ignored by the State Government, in Ext. R-4(b) it is stated that no forest land should be diverted for any other purpose. Counsel submitted that it being a communication by the Central Government to the State Government the latter cannot ignore it. It is submitted that no State Government can embark upon any scheme on an

experimental measure and that Section 3 of the Environmental Protection Act gives adequate powers to the Central Government to issue such orders.

6. Pursuant to Ext. R-4(a) representation sent by Vigil India Movement, Ext. R-4(b) letter was sent by the Joint Director (WL), Government of India, Ministry of Environ-ment arid Forests to the Principal Chief Conservator of Forests, Ext. R.-4(b) mentions that a letter from Vigil India Movement regarding Agasthyavanam Biological Park was received and as the Zoo Authority of India has already come into existence request has been made to the organisers of the Park not to go ahead with project without approval of the Zoo Authority and a detailed project report has to be obtained from the organisers of the proposed park. In Ext. R-4(b) it is stated that it appears from the report that the proposal involves diversion of some rain forest which attracts provision of Forest Conservation Act also. The Principal Chief Conservator of Forests was informed to take immediate action to ensure that no forest land is diverted for creation of the park. Counsel for the petitioners submitted that the attitude of the respondents in totally ignoring Ext. Rn-4(b) infringes Centre-State relationship as envisaged in the Constitution. The attack on Ext. R-4(b) is on the ground that for the project sanction as such is not necessary, that a junior officer like the one who issued Ext. R.-4(b) is not competent to write such a letter, that it is only a demi-official letter written in an irresponsible manner and that at any rate the State Government is not bound by it. Counsel for the petitioners relying on Article 166 of the Constitution submitted that the person who wrote Ext. R.-4(b) is well within his right to issue the same as Ext. R.-4(a) addressed to the Minister might have been produced before him and there is every possibility of Ext. R-4(b) having been issued at his instance.

7. Additional Advocate General submitted that the petitioners are under a mistaken impression that the establishment of Biological Park would be detrimental to the ecological system in the country and that it infringes the Forest Conservation Act, the directions issued by this Court in O.P. 4084 of 1986 and Wildlife (Protection) Act. It is contended by him that the prima purpose of the project is really afforestation and protection of the forest. It is asserted that no tree would be cut and removed unnecessarily and the apprehension that the forest wealth will be destroyed is without any basis. This is a project approved by the State Planning Board, Planning Commission of India and included in the 8th Five Year Plan. Major portion of the area where the Biological Park is sought to be established is a degraded forest and at present this is a haven for boot-leggers and anti-social elements. When the project becomes a fait accompli anti-social elements alone would be hit as they would not be in a position to continue their nefarious activities. In other words, contention of the Additional Advocate General is that the project is intended to preserve forest wealth in its pristine glory.

8. First respondent's definite contention is that having conceived the idea of establishing a Biological Park in the Kottur Reserve in the Thiruvananthapuram

Forest Division the wildlife wing of the Kerala Forest and Wildlife Department drew up a preliminary report and submitted the same to the State Government in September, 1990. The project was named as "Agasthyavanam Biological Park". The project underwent detailed scrutiny at various decision making levels of the Government and the project was cleared by the Government. Rupees 46 lakhs was allocated in the State Government budgets for 1991-92 to initiate the project. Initially attempt was made for collection of basic data on zoological parks, biological parks, botanical gardens and protected areas within the country and outside. The preliminary report on Agasthyavanam Project was sent to Scientific Institutions like the Wildlife Institute of India, Dehru Dun, the Centre for Environmental Education, Ahamadabad, the Kerala Forest Research Institute, Peachi, the Tropical Botanical Garden and Research Institute, Palode, the Centre for Earth Science Studies, Thiruvananthapuram and the State Land Use Board for their opinion and guidance. Teams of Scientists and Experts were consulted. As per G.O. Rt. No. 194/92/FAWLD dated 19-5-1992 the Government constituted a Scientific Committee consisting of 14 members for the scrutiny of the scientific aspects and for advice and guidance for the implementation of the Agasthyavanam Biological Park Project. It consists of scientists and experts. Their names are mentioned in the additional counter-affidavit of respondents 1 and 2. The preliminary report and the data collected by the Conservator of Forests, Agasthyavanam Biological Park were supplied to the members of the Scientific Committee for their scrutiny and analysis. The members of the Scientific Committee visited the project area and each of them offered their views and suggestions in writing. In the light of their views and suggestions a draft report of Phase I Agasthya-vanam Project was drawn up. After discussions Project Report Phase I was finalised by the Scientific Committee. The final project report was submitted to the Government and as per G.O. (MS) No. 48/92/F&WLD dated 28-11-1992 the Project Report was approved for implementation. Ext. R-3(a) is the Government Order.

9. Thus it can be seen that the State Government constituted a Scientific Committee in 1992 and requested the Committee to scrutinise the "preliminary project report of the proposed project and to assess its technical viability and the Committee made a threadbare study about it and gave it a final shape. Stand of the first respondent is that the area is highly degraded forest and that it has all the potentials for bio-conservation and development. The essential idea of the project is conservation of the flora and fauna of the Western Ghats of Kerala and that if the proposal as envisaged in the report is implemented the area can be developed into a model Biological Park. Out of the 23 Sq. Kms. area earmarked for the park, about 17.5 Sq. Kms. will be set apart for natural regeneration.

10. First respondent contended that the place known as Agasthyamala and the proposed project area of Agasthyavanam are two different places. Kottur Reserve area {proposed to be renamed as Agasthyavanam} is about 23 Sq. Kms. in size, flanked by Neyyar Wildlife Sanctuary in the South and Peppara Wildlife Sanctuary in the North. The basic objectives of the Biological Park Project are stated in para

1.5 of Agasthyavanam Biological Park Phase I Project Report. They are:

- "(i) The re-afforestation of the highly degraded Kottur Reserve area,
- (ii) The re-introduction there of wild animals and birds which have almost disappeared therefrom and
- (iii) The creation thereby of a splendid storehouse of the abundant variety and diversity of the unique flora and fauna of the Western Ghats.

Copious rainfall favours the Project Area during the Monsoon season; but the rainwater is quickly washed away into the Arabian Sea rendering the area dry, barren and dull for about six months from December to May. This rainwater will be effectively stored by erecting a few minor checkdams and retained in small ponds which will (a) preserve the humidity and moisture of the area (b) prevent the withering of vegetation in the arid months (c) provide essential drinking water to the wild animals of the Park during the dry season (d) attract migratory and other water-birds and (e) give shelter to a variety of fishes, other aquatic creatures and waterplants. The Agasthya Vanam Project is primarily a project of eco restoration, afforestation and conservation."

In the Project Report it is stated that the Biological Park will finally be an exquisite Nature Reserve with a luxuriant growth of trees and a rare wealth of wild birds and animals and it will be almost a "Standing Exhibition" of the wonderful biological diversity of the region.

H. The objectives of the Project are outlined in para 1.8 as hereunder:

- " 1. Regeneration and eco-restoration of the degraded forest area of Kottur Reserve in Thiruvananthapuram district.
- 2. Scientific conservation of the existing flora and fauna of the Project Area.
- 3. Restoration of those species which have gradually vanished from the Project Area and the introduction of other suitable Western Ghat species for the generation of maximum biodiversity.
- 4. Breeding and enhancement of stock of rare and endangered species to ensure their permanent preservation and propagation.
- 5. Careful management and maximum sustainable utilisation of the available water and soil resources of the Project Area.
- 6. Creation of a permanent treasure-house (which will also be a "Standing Exhibition") of the biodiversity of the Western Ghats.
- 7. Provision of facility for research on the flora and fauna of Kerala, continuous documentation of their details and the creation of reliable scientific data base.
- 8. Affording opportunity for Nature Education to students, and children in general, through personal observation, familiarisation and sylvan recreational

activity.

9. Providing facilities for "ecotourism" to people who love greenery and sylvan life."

Thus, it can be seen that wildlife tourism, is given only last priority among various objectives of the project. Merely because wildlife tourism is also one of the objectives of the Biological Park, it is not possible to hold that the whole scheme is intended to promote tourism to the detriment of the very existence of the natural forest in the region.

12. Only 16% of the total outlay is earmarked for staff quarters in the preliminary report. Additional Advocate General admitted that for the effective conservation of the flora and fauna strict vigilance by adequately trained and dedicated staff will be necessary. He asserted that the forest wealth would be effectively protected, that no tree would be unnecessarily out and that the endeavour shall be afforestation and its maintenance at all costs. Considering the project, as a whole, it is not possible to hold that its implementation would have any disastrous consequence as pictured by the petitioners.

13. Man and Biosphere (MAB) Programme of UNRSCO launched in 1971 aims at developing a base for rational use or conservation of natural resources while improving the relationship between the man and environment. The concept of biosphere reserve was evolved to conserve natural areas and the genetic material they contain. In the "Biosphere Reserve in India", a Government of India Publication 14 sites have been identified as potential biosphere reserves together with their locations. In the States of Kerala, Karnataka and Tamil Nadu, Nilgiri is mentioned as Biosphere Reserve. This will show that the project area which we are concerned is not a biosphere reserve. As the Government of India publication would show that it is not a biosphere reserve the contention of the petitioners to the contrary based on an article published by Swaminathan is not tenable. That apart, concept of biological park is not in any way antagonistic to that of biosphere reserve. It is also significant to note that the Government of India has selected only Silent Valley area in Palghat District from Kerala State for inclusion in the Biosphere Reserve (Nilgiri Biosphere Reserve). So, it is apparent that the Central Government has no intention to create a Biosphere Reserve at Agasthyamala or any where nearby.

14. The allegation that large number of concrete buildings would be put up inside the wild forest is emphatically denied by the first respondent. It is stated in the counter-affidavit that most of the buildings required for the project area proposed to be constructed will be outside the forest area and also in the private land specifically acquired for that purpose. Additional Advocate General submitted that there is no proposal to construct any building inside the forest area as adequate land is available outside the forest area for such construction. The allegation that large number of valuable trees will be cut and removed is also denied by the first respondent. First respondent's stand is that in the process of

implementation of the project it has been decided that thousands of plants would be planted and maintained well in the present degraded forest area. Additional Advocate General's submission that trees will not be cut from the thick forest areas and that no construction will be made there is recorded.

15. Construction of roads is permitted even under the Wildlife (Protection) Act. Section 33(a) provides that the Chief Wildlife Warden shall be the authority who shall control, manage and maintain all sanctuaries and for that purpose, within the limits of any sanctuary may construct such roads, bridges, buildings, fences or barrier gates and carry out such other works as he may consider necessary for the purpose of such sanctuary. So, the petitioners cannot object to the formation of the road through the project area invoking the provisions under the Wildlife (Protection) Act. Construction of roads would be really necessary for the protection of the Biological Park. For roads only a small portion of the area will be utilised and under no circumstances roads will not be constructed through the thick forest area. The existence of road is very essential for the upkeep of the Biological Park and in a case where few trees are cut from the area through which a road passes one cannot jump to the conclusion that as a result of the project forest has been plundered.

16. Ext. P-I(a) in O.P. 8905/1992 is an article written by Swaminathan appended to Hindustan Daily. Additional Advocate General pointed out that this article is not in any way relevant as it is only the personal view of the writer. He submitted that a reading of the project report would really disclose that after due deliberations and considerations Government agreed to the policy of having the project area being established in Kottur Reserve Forest.

17. The Committee on Science and Technology has only advisory functions. Government has to take final decision. State Government did not consider it necessary to refer the matter to the Committee on Science and Technology. Additional Advocate General submitted that in the Forest Department there are experts to consider the entire matter in its correct perspective. Government in this matter decided to refer it to a separate committee and some of its members are members of the Science and Technology Committee. Government wanted specialists in forestry to consider the entire issue. In the additional counter-affidavit paras 4 and 5 details are given.

18. Two things emerge. One is the decision to establish Biological Park. This is an administrative policy decision. Secondly, by establishing Biological Park there is no violation of any statutory or constitutional provision. If there is no such violation, administrative or policy decision cannot be interfered under Article 226 of the Constitution of India.

19. Regarding O.P. 8905/1992 contention of the petitioners is that Government land itself is available and so their property need not be acquired. Additional Advocate General submitted that the property of the petitioners lies close to the project area and that no other land lies contiguous to the project area and so its

acquisition is indispensable. He further submitted that correct and legal procedure alone was adopted for the acquisition of land and there cannot be any complaint about it.

20. Petitioners contend that emergency power u/s 17(4) of the Land Acquisition Act cannot be invoked arbitrarily, that the project itself is under challenge, that the proposal regarding the Biological Park involves diversion of some rain forest which offends provisions of the Forest Conservation Act and that as the Zoo Authority of India has not proved the project it cannot be held that the acquisition of the petitioners' property for the Biological Park Project is for a public purpose. Contention of respondents 1 to 3 is that the proposed Biological Park does not involve any diversion of forest for a non-forest purpose, that the project does not require the approval of the Zoo Authority as contended by the petitioners and that the project being assigned top priority has been included in the 8th Five Year Plan with due approval of the Planning Commission of India and so the acquisition of the land is certainly for a public purpose.

21. Petitioners can succeed in their challenge against the land acquisition proceedings only if they can establish that the action of the Government in issuing the notification u/s 6 is a colourable exercise of power. As held in *Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others*, the declaration u/s 6(1) of the Land Acquisition Act that the land is needed for a public purpose would be final and conclusive, except when there exists a colourable exercise of the power by the Government in that the purpose is not a public purpose, but a private purpose or no purpose at all. In the counter-affidavit filed by respondents 1 to 3 in O.P. 8905/1992 it is asserted that there is really urgency for the proposed acquisition of land as Rs. 1 crore has been set apart in the current year's budget for the project and that major portion of this amount is intended for the execution of civil works (construction of buildings and roads) in the area proposed to be acquired and unless the acquisition proceedings is completed expeditiously, the bulk of the budgetary allocation would go waste.

22. The urgent necessity to acquire the petitioners' land cannot be ignored. Construction of buildings is really indispensable for the success of the project and as buildings cannot be constructed in the areas exclusively reserved for Biological Park and as the petitioners' land is really required for execution of time-bound civil works invocation of emergency power u/s 17(4) of the Land Acquisition Act cannot be held to be arbitrary or illegal. In *Ratilal Shakarabhai and Others Vs. The State of Gujarat and Others*, the Apex Court held:

"Where there is a declaration u/s 6 that the land proposed to be acquired is needed for a public purpose, the court cannot go into the question whether the need was genuine or not unless it is satisfied that the action taken by the Government was a fraudulent one. The conclusiveness in Section 6(3) must necessarily attach not merely to a need but also to the question whether the purpose was a public purpose."

As the Government had issued the declaration being satisfied of the urgent requirement of the land, it is not possible to hold that it went wrong in doing so. In *Jage Ram and Others Vs. State of Haryana and Others*, the Supreme Court held (at p. 1035, para 8):

"Unless it is shown that there was a colourable exercise of power, the Court cannot go behind the declaration of the Government and find out in a particular case whether the purpose for which the land was needed was a public purpose or not."

Petitioners contended that the Minister's reply in the Assembly that the project report is only in its preparation stage would rule out the necessity for the invocation of emergency powers under the Land Acquisition Act. As it has become really necessary for the State to acquire the petitioners' land for the successful implementation of the Biological Park, contention of the petitioners that the land in question is not needed for a public purpose is not worthy of consideration. As the petitioners could not establish that there was any colourable exercise of power in the land acquisition proceedings taken against their property, this Court cannot probe into the declaration of the Government to ascertain whether the purpose for which the acquisition proceedings are initiated is for a public purpose or not. Petitioners could not establish sufficient grounds to quash the land acquisition proceedings.

23. According to the petitioners, everything done in the name of the Park would only lead to promotion of tourism and as a result of it the forest wealth of the State is likely to be destroyed. Additional Advocate General submitted that normally the tourists will not be allowed to enter the reserved forest area and so the apprehension of the petitioners is without any basis. In so far as the Project is concerned ordinary tourism is not given any pride of place. Vital role of eco-tourism is emphasized in the Project Report. In Para 1.7 of Chapter I of the Report vital role of eco tourism is stated as follows :

"Any programme of conservation of forests can be ultimately successful only if the people in general are persuaded to appreciate the importance of such an endeavour. In a democratic country only programmes in which the citizens participate wholeheartedly can be successfully sustained over a long period of time. Therefore it is necessary that the people -- especially the young people of the impressionable age -- should be afforded necessary opportunities to view the forests intimately and to observe wildlife at close quarters. This is the only way to make them fall in love with Nature. The Biological Park should therefore offer ample facilities for what has of late become widely known as "ecotourism" (or wildlife tourism). The Biological Park will eventually make the people of Kerala deeply conscious and convinced of the immense beauty and fascination of forests and also of the supreme value and importance of conservation of forests and wildlife in the total well-being of the nation."

The allegation that by implementing the project the forest area is likely to be

converted as tourism resort is refuted by the first respondent. First respondent has admitted that one of the objectives of the project is to provide facilities to the wildlife tourists to view and observe the wildlife at close quarters without infringing on the sanctity of the flora and fauna in any manner.

24. It has next to be considered whether the project violates any of the provisions of the Forest Conservation Act. Section 2 of the Forest (Conservation) Act, 1980 with amendments made in 1988 makes restriction on the deservation of forests or use of forest land for non-forest purpose. Explanation to Section 2 reads:

"For the purpose of the Section, "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for;

(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;

(b) any purpose other than reafforestation; but does not include any work relating or ancillary to conservation, development and management of forests and wildlife, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, water-holes, trench marks, boundary marks, pipelines or other like purposes."

Though Section 2 imposes restrictions on the dereservation of forests or use of forest land for non-forest purpose, the Explanation to the Section indicates that works relating to or ancillary to conservation, development and management of forests and wildlife cannot be construed as non-forest purpose. As the object of the Biological Park cannot be characterised as a "non-forest purpose", prior approval of the Central Government is not necessary. On a consideration of the Project Report it is apparent that the objectives of the Project are only laudable and the apprehensions of the petitioners are based on incorrect data and information.

25. Chapter I, Para 1.9 of the Project Report reads:

"Uninformed people may possibly entertain the erroneous impression that the Biological Park is some sort of an Amusement Park or Public Garden for general recreation -- since the word "Park" has got ever so many diverse meanings (indeed even a "Car Park" is a park). It may be pointed out that one of the many meanings of the word "park" is : "A piece of country kept in its natural condition as a Nature Reserve or the like" (Chambers' Twentieth Century English Dictionary). Like Kanha National Park and Kaziranga National Park, the proposed Agasthya Vanam Biological Park is also a "park" in this specific sense of a "Nature Reserve" It is a "Biological" Park because it is expected to give equal emphasis to the conservation of plant life and animal life. The Agasthya Vanam Biological Park is certainly not going to be a Pleasure Grove or Amusement Park."

Regarding location of the Park, para 1.6 states;

"The proposed Biological Park to be located in Kottur Reserve has been given the attractive nomenclature of "Agasthya Vanam" in honour of the majestic "Agasthyakoodam" Peak which looms large at a distance and makes its august presence felt in the entire neighbouring area. The Agasthya Vanam Biological Park will be a remarkable treasure-house of the fabulous floral and faunal wealth of the Western Ghats. It can provide a venue and abode to those students of Biology who are prepared to conduct meaningful and dedicated research on the various species of endemic plants and animals of this region and to document all relevant scientific details about them in order to create a reliable database for future generations."

26. The State Government has decided to establish Biological Park taking into account the expert opinion and after due deliberations. So long as there is no violation of any statutory provision the policy decision of the Government cannot be interfered by this Court under Article 226 of the Constitution of India. In *Madhusoodanan Nair v. Govt. of Kerala* 1983 Ker LT 43, this Court held that in a democratic State every citizen has a right to question any governmental action and he has a right to see that the Government is on the proper path. In the above case, creation of a new district by executive order was challenged. This Court held that as the State in its exercise of executive power is charged with administration of the State and so long as the State Government does not go against the provisions of the Constitution or any law, the width and amplitude of executive power cannot be circumscribed.

27. So long as the policy decision of the Government does not offend provisions of any statute or Constitution the Court cannot interfere. As the State Government on a consideration of the opinion of the experts and scientists have decided that the establishment of the Biological Park would really be conducive to the proper maintenance of the forest wealth and as it is a badly needed step for afforestation this Court cannot intervene in a matter which is completely within the executive powers of the Government and which is purely administrative in nature especially when there is no evidence of any patent abuse of power. The scope of judicial review is considered in *Ravi Industries & Saw Mills v. State of Kerala* 1983 Ker LT 560. This Court held :

"It is well established principle reiterated by Courts from time to time that "judicial review is concerned, not with the decision, but with the decision making process". The question with which the court is concerned or whether or not the decision was reasonably based on evidence, whether irrelevant matters had been taken into account or whether all relevant matters had been considered or whether there was violation of rules of natural justice or whether the relevant provisions of law had been ignored or misapplied or whether the decision is so manifestly unreasonable that no reasonable authority, entrusted with the power in question, could reasonably have made such a decision."

In *Bahuleyan v. State of Kerala* 1981 Ker LT (SN) 87 : 1982 Lab 1C 233), this Court held that in matters of administrative concern calling for policy decisions or

exercise of discretion by the Government so long as infringement of fundamental right is not shown courts will have no occasion to interfere and that the court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of the decision of the Government Court cannot interfere even if a second view is possible from that of the Government. In other words, policy decision must be left to the Government as it alone can adopt which policy should be adopted, after considering all points from different angles. So long as the policy decision does not infringe any statute or constitutional provisions Courts should not meddle with it. As the desirability and feasibility of the project have been considered by the first respondent, this Court cannot substitute its own finding,

28. Chapter II of the Project Report gives details as to the location of the Project Area.

"2.1 Location -- The Biological Park will be located in Kottur Reserve which lies on the western slopes of the Western Ghats at the south-east corner, in Nedumangadu Taluk of Thiruvananthapuram District. This tract is touching the outer limits of Neyyar Wildlife Sanctuary in the south-west and bordering the outer limits of Peppara Wildlife Sanctuary in the north-east. This bit of forest was left over while constituting the Neyyar and Peppara Wildlife Sanctuaries, because of its highly degraded nature and extreme dearth of wildlife due to excessive biotic interference and pressure from adjoining habitations for firewood, small timber, fodder, charcoal and reeds. The Kani tribals were practising shifting cultivation along the valleys of the small streams flowing through this area in the past. The Project Area lies between 8°30" and 8°40" North latitude and between 77°5" and 77° 10" East longitude. Kottur Reserve Forest is in Paruthippally Range of Thiruvananthapuram Forest Division."

29. In *Kerala Public Service Commission v. Pylo*, 1986 Ker LT46 ; 1986 Lab 1C 1440), a Division Bench of this Court held that the correctness of the reasons which promoted the decision-maker taking one course of action instead of another is not a matter of concern in judicial review and the Court is not the right forum for such investigation. As the State Government has considered the idea of establishing Biological Park which in turn facilitates afforestation and protection of the forest wealth it need not be doubted so long as there is no material to hold that it is actuated by mala fides. So long as it has not been established that the State Government is moving on extraneous considerations this Court cannot interfere.

30. In the instant case the Committee has opined it necessary to have a Biological Park. As the Government has consulted the expert . bodies and formed its own opinion this Court cannot interfere with such decision. In *Asif Hameed and others Vs. State of Jammu and Kashmir and Others*, the Supreme Court held that while exercising power of judicial review of administrative action, the Court is not an appellate authority and the Constitution does not permit the Court to direct or advise the executive in matter of policy or to sermonize any matter

which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers. As the establishment of Biological Park does not contravene any statute or constitutional provision the policy decision taken by the executive cannot be interfered by this Court and supplant its views. In this context, it is useful to refer to M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, , where the Supreme Court held (Para 56 of AIR):

"However, the Court has neither the means nor the knowledge to re-evaluate the factual basis of the impugned orders. The Court, in exercise of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings" are reasonably supported by evidence."

Judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provision or it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court it cannot interfere. As the State Government has considered all aspects of the matter and as there is nothing to show that its decision is palpably incorrect or in contravention of any statute or constitutional provisions there cannot be any judicial review of the policy decision taken by the Government.

31. Petitioners have a contention that the directions in O.P. 4084 of 1986 that the State will ensure that no cutting of trees would be done have not been complied with and that the attempt to construct buildings would amount to flagrant violation of the directions of this Court. Contention of the respondents is that the proposed park project area does not come within the area mentioned in O.P. 4084 of 1986. The contention that the directions of this Court in the above O.P. are flouted is emphatically denied. As the project area is far away from the area in which the directions were issued by this Court in O.P. 4084 of 1986, contention of the petitioners is without any merit.

The reliefs prayed for in the Original Petitions cannot be allowed. Original Petitions are dismissed.