

# **BEFORE THE NATIONAL GREEN TRIBUNAL SOUTHERN ZONE, CHENNAI**

**Application No. 216 of 2015 (SZ)**

**IN THE MATTER OF:**

Nimmala Ankaiah  
S/o.Ankaiah  
Vittaiahjpalem (V) Chilamattur (Post)  
Varadaiah Palem (Mandal),  
Chittoor District,  
Andhra Pradesh - 517 541

... Applicant

**AND**

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  1. Union of India rep by Secretary to Government, Ministry of Environment, Forests and Climate Change, New Delhi 110 003.
  2. The State of Andhra Pradesh, Rep. by its Secretary Environment, Forest, Science and Technology Department, A.P.Secretariat, Hyderabad 500 004.
  3. The State of Andhra Pradesh, Rep. By its Secretary, Industries and Commerce Department, A.P.Secretariat, Hyderabad- 500 004
  4. The Andhra Pradesh Industrial Infrastructure Corporation Ltd., Rep. By its Managing Director, ParishramaBhavan, Basheerbagh, Hyderabad -500 036.
  5. The Collector and District Magistrate cum Chairman, Pulicat ESZ Monitoring Committee, PSR Nellore District, Nellore - 524 001.
  6. M/S.GVK EMRI Devarayamzal Post, Medchal Road, Hyderabad.-500 078
  7. M/s. GROB Machine Tools India Private Ltd., Sy.No.145, Plot NO.132/B, 4<sup>th</sup> Floor, Sardar Patel Nagar, Hyder Nagar, Kukatpally, Hyderabad - 500 072.
  8. Andhra Pradesh State Pollution Control Board, Rep. By its Member Secretary, PayavaranBhawn - A- III, Industrial Estate, Sanath Nagar, Hyderabad - 500 018.

... Respondent(s)

**Counsel appearing for the Applicant:**

**Mr.T.Mohan , Sr.Counsel for**

**Rema Smrithi V.K.**

**Counsel appearing for the Respondents:**

**Mr. G.M. Syed Nurullah Sheriff for R-1**

**Mrs. H.Yasmeen Ali for R2 to R5**

**Mr.T.Sai Krishnan for R8**

**M/s. N.Jayakumar for R6.**

**ORDER**

**PRESENT:**

**HON'BLE SHRI JUSTICE DR. P. JYOTHIMANI, JUDICIAL MEMBER**

**HON'BLE SHRI P.S. RAO, EXPERT MEMBER**

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**Delivered by Hon'ble Justice Dr.P.JyothiMani, Judicial Member**

**Dated 2<sup>nd</sup> August,2016**

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Whether the Judgement is allowed to be published on the Internet – Yes/No

Whether the Judgement is to be published in the All India NGT Reporter – Yes/No

This applicant, who is said to be a progressive farmer and a Social Worker, has filed the present application to set aside the allotment of 50 acres of land in Pudi (V) SPSR, Nellore District, for the establishment of Medical College and Super Speciality Hospital under G.O.Ms.No.21, Industries and Commerce (IP & INF) Department dated 28.02.2015 in favour of the 6<sup>th</sup> respondent M/s.GVK Emergency Management and Research Institute, apart from the allotment of another 20 acres of land in Pudi Village, Tada (Mandal) SPSR Nellore District in favour of the 7<sup>th</sup> respondent M/s. GROB Machine Tools India Pvt. Ltd. for establishing a high precision and sophisticated CNC Machines manufacturing project under G.O.Ms.No.40, Industries and Commerce (IP & INF) Department dated 22.05.2015 and to declare such allotments *Ultravires* and in contravention of Eco Sensitive Zone (ESZ) Notification dated 26.06.2015 and to restrain the 3<sup>rd</sup> and 4<sup>th</sup> respondents, namely, the State of Andhra Pradesh and Andhra Pradesh Industrial Infrastructural Corporation Ltd. from taking any further activities other than the activities permissible under ESZ Notification in the lands concerned, which is within the ESZ limit of Pulicat Bird Sanctuary and

consequentially restraining the respondents 1 to 5 and 8 from granting any permission / clearance / consent to any Industry / activity / process in violation of ESZ Notification dated 26.06.2015 and to direct the respondents 1, 2 to 5 to monitor all activities relating to the industries and pollution within ESZ as notified above.

2. It is the case of the applicant that the Ministry of Environment, Forests and Climate Change namely, the 1<sup>st</sup> respondent, has issued a Gazette Notification on 26.6.2015 declaring an area of 2 kms. from North to South all along the western boundary of Pulicat Bird Sanctuary in the State of Andhra Pradesh as an Eco Sensitive Zone (ESZ). The Notification lists the activities, which are prohibited and the activities which are regulated. The Notification also constitutes a Monitoring Committee with the District Collector, namely, the 5<sup>th</sup> respondent, as its Chairman, empowering to initiate proceedings under Section 19 of Environment (Protection) Act 1986 (EP Act) for any contravention of the provisions of the Notification. Prior to the issuance of the final Notification, the Government of India has issued a draft Notification on 03.01.2014 asking for comments and objections from the stakeholders. Inspite of the same, the 4<sup>th</sup> respondent has started fencing the lands near Pulicat lake and the applicant came to know that the 3<sup>rd</sup> and 4<sup>th</sup> respondents proposed to allocate 45 acres of land to the respondents 6 and 7. The industries which are earmarked as Red Category, are proposed to be started within ESZ limit of sanctuary and Pudi village, Tada (Mandal) SPSR Nellore District. Therefore, according to the applicant, the purpose for which the lands are allotted to respondents 6 and 7 for establishing Red category units, is a prohibited activity as per ESZ Notification dated 26.6.2015. The lands are situated within 2 kms from the Pulicat Bird Sanctuary, which was declared as a Bird Sanctuary under Section 26-A of the Wild Life (Protection) Act 1972. The said lake is the

second largest brackish water lagoon in India, situated in an extent of 610 sq.kms attracting 220 species of birds, of which about 60 species are migratory birds. It is an Important Bird Area (IBA) identified by the Birdlife International, which is an international partnership of conservation organisation to which Bombay Natural History Society is its Indian Partner. The applicant has also stated about the criteria adopted by the said organisation, which has categorized critically endangered or vulnerable species as IUCN Red list category. The site is also qualified to be a Ramsar site. The National Biodiversity Board of India has also made a study about the Pulicat lake and as per its study, the sub strata in the lake proves the primary parameters for determination of biodiversity in the lake. Further, nearly 26 fishermen villages are dependent upon the lake for their livelihood. A number of canals and rivulets flow into the lake. The main rivulets are being Swarnamukhi, Kalangi and Amidrain. Buckingham canal also flows parallel to the coast in this area and through the sanctuary. They perform an important role in maintaining the brackish water nature of the lake. The applicant has also referred to the order of Hon'ble Supreme Court in Goa Foundation case directing the MoEF and CC to give final opportunity to all the States/Union Territories to identify and demarcate the Eco Sensitive Zone around the Protected Areas. Ultimately, the Government has notified the ESZ for Pulicat Bird Sanctuary within the territory of Andhra Pradesh. With the above facts and legal grounds, the applicant has filed the present application with the prayers stated supra.

3. The first respondent in its affidavit of June 2016 has stated that the purpose for declaring ESZ around the National Parks and Wildlife Sanctuaries is to create a kind of "Shock Absorber " for the Protected Areas and they would also act as transition zone from the areas of high protection to the areas of lesser protection. A strategy was evolved as Wildlife

Conservation Strategy in 2002 to the effect that areas falling within 10 kms of boundary of National Parks and Wildlife Sanctuaries be notified as Eco-fragile Zones under the Environment (Protection) Act 1986. The Hon'ble Supreme Court has also directed, in Goa Foundation case, all the State Governments to forward proposals for Eco Sensitive Zones within 10 kms of National Parks and Wildlife Sanctuaries. Accordingly, the first respondent has made a request to all the State Governments/Union Territories to submit such proposal.

4. Pursuant to a decision taken by the National Board for Wildlife, the MoEF and CC also prepared guidelines dated 09.02.2011 for preparing Eco Sensitive Zone proposals in respect of the present case for notifying Eco Sensitive Zone around the Pulicat Bird Sanctuary. The State Government of Andhra Pradesh has sent a proposal that an area of 2 kms width from North to South along the western boundary of Pulicat Bird Sanctuary can be declared as Eco Sensitive Zone. It was, thereafter, on examination of the said proposal and after obtaining comments from Wildlife Institute of India (WII) Dehradun, a draft notification was issued in the Gazette of India on 03.01.2014 and also put in public domain by uploading in the Ministry's Website for a period of 60 days inviting comments/objections/suggestions from all the stakeholders. After receiving those comments etc., the Eco Sensitive Zone Expert Committee held its meetings on 23.07.2014 and 02.03.2015 and based on the recommendations of the Eco Sensitive Zone Expert Committee, a final notification came to be published on 26.06.2015, by following the mandatory procedures in declaring Eco Sensitive Zone of Pulicat Bird Sanctuary in so far as relates to the territory of Andhra Pradesh. As per the final Notification dated 26.06.2015, it prohibits establishment of any new polluting or highly polluting industry in the Eco Sensitive Zone. That apart, it prohibits production of any hazardous substances apart from

regulating pollution from existing units in terms of Air and Water, disposal of solid wastes and discharge of treated effluents as per the environmental regulations. Further, the Eco Sensitive Zone Notification requires the State Governments to constitute a Monitoring Committee and in the present case, a Monitoring Committee was constituted with the District Collector as its Chairman, one NGO representative, one representative from Wildlife Institute of India, Dehradun , Regional Office, State Pollution Control Board, Concerned Senior Town Planner, Deputy Conservator of Forests, Secretary in-charge of Pulicat Bird Sanctuary as its members. The Notification also provides for preparation of Zonal Master Plan for effective management of Eco Sensitive Zone and the same has to be prepared by the State Government in consultation with the local people. It is also stated that as per the Notification, 2 kms from Pulicat Bird Sanctuary from North to South along its western boundary was declared as Eco Sensitive Zone (ESZ).

5. The 4<sup>th</sup> respondent, Andhra Pradesh Industrial infrastructure Corporation Ltd., has filed a reply dated 11.03.2016 on its behalf and on behalf of respondents 2 and 3, raising an objection that the applicant has no right to file the present application and it is in the private interest to stop the developmental activities especially when there is no construction of polluting industry in the Eco Sensitive Zone. That apart, the prayer challenging the allotment of lands for industrial purpose is not maintainable before this Tribunal. It is further stated that at present the land is only in the allotment stage and even the Eco Sensitive Zone Notification does not ban all activities and it bans only Red Category industries, which are impermissible. Whether the proposed industry is red category or not, is for the Pollution Control Board to decide and not the applicant. The Government is conscious of its duty to protect the environment and any activity will be started only after obtaining necessary "Consent" from the

Pollution Control Board and at this stage the applicant cannot categorize any proposed activity as illegal. It is also the case of the said respondents that the proposed lands are not Wetlands and they are at a distance of 2 kms from Pulicat lake and the nature of industry permissible will be examined by the competent authority when permission is sought for. It is also stated that the Collector, Nellore has informed that the lands, as reported by the District Forest Officer, are within 2 kms from Eco Sensitive Zone and the Collector, has also reported that no activities violating Eco Sensitive Zone are observed. It is also denied that these respondents are acting in violation of Eco-centric approach or against the Public Trust Doctrine and therefore, prayed for dismissal of the application.

6. The 5<sup>th</sup> respondent, District Collector cum District Magistrate in his affidavit dated 05.02.2016 has stated that the matter was enquired by the Revenue Divisional Officer, Naidupet regarding the allocation of lands to respondents 6 and 7 and obtained a status report on the Government lands alienated to the above said companies. It is stated that an extent of 17.61 acres in Survey No.46 etc. of Pudi Village, was allocated to 7<sup>th</sup> respondent and an extent of 30 acres of land in Survey No.54 etc of Pudi Village was allocated to the 6<sup>th</sup> respondent. The Revenue Divisional Officer, Naidupet has inspected the lands on 04.02.2016 and confirmed that there are no activities noticed in violation of Eco Sensitive Zone Notification and the said lands are lying waste and no construction either permanent or temporary, took place. However, with regard to the Eco Sensitive Zone, the Forest Range Officer, Pulicat Bird Sanctuary, Sullurpet inspected the lands along with Forest Beat Officer, Deputy Zonal Manager of 4<sup>th</sup> respondent and its Environmental Engineer and reported that the said lands fall within 2 kms of Eco Sensitive Zone of Pulicat Bird Sanctury and that the order of *Status quo* passed by the Tribunal is being implemented in letter and spirit.

7. The 6<sup>th</sup> respondent in its reply dated 12.02.2016, while denying all the allegations, has stated that there are no merits in the case and hence, the application is liable to be dismissed. According to the said respondent, there is no cause of action for the applicant under Section 14 of the National Green Tribunal Act, 2010 as he has not raised any substantial question relating to environment. It is also stated that the Government has only passed an order of allotment of land to the said respondents and the conveyance is yet to be materialized. In the mean time, the owners of the lands have approached the High Court of Andhra Pradesh at Hyderabad, challenging the acquisition proceedings, wherein all conveyance in connection with the acquired lands are stayed. Therefore, there is no layout, plan or features etc for putting up any building and the application is premature. On the factual matrix also, the 6<sup>th</sup> respondent denies various allegations and stated that, in fact, the locality is very much in need of a Medical Institution for the welfare of the Villagers. It is further stated that the 6<sup>th</sup> respondent is a reputed and standard organisation and it was only after a complete study of the remote localities, where the public need Medical and Emergency management services, the 6<sup>th</sup> respondent has identified Nellore District for its project of starting a Medical Institution. However, after the allotment was made, in a batch of Writ Petitions filed before the High Court of Andhra Pradesh at Hyderabad, stay was granted by the High Court and in such circumstances, there is no substantial question relating to environment that arises for consideration before this Tribunal and the intention of the applicant is only to stall the developmental activities.

8. That part, it is the case of the 6<sup>th</sup> respondent that the applicant is not an affected party and the proposed Institutions are not polluting

industries and they have never violated any environmental norms. It is false to state that the 6<sup>th</sup> respondent is setting up a Medical College and Hospital within 1 km from the western boundary of Pulicat lake. This allegation has no basis. The application itself has been filed on surmises and there is no violation of directives issued by the Hon'ble Apex Court and therefore, prayed for dismissal of the application.

9. The 8<sup>th</sup> respondent - State Pollution Control Board in its reply dated 27.05.2016 has stated that the Board has not received any application either from the 6<sup>th</sup> or 7<sup>th</sup> respondent seeking for "Consent" to establish either a Medical college and Super Speciality Hospital or for establishing a high precision and sophisticated CNC Machines manufacturing project, respectively. It is also stated that Health Care establishment is categorized as a Red Category Industry. Similarly, the industry or process involving metal surface treatment or process such as pickling, electroplating, paint stripping, heat treatment, phosphating, finishing and anodizing, enamelling and galvanizing are classified as Red Category Industry. It is the case of the Board that in the absence of any application having been received from 6<sup>th</sup> or 7<sup>th</sup> respondent, it is not possible for the Board to make any comments about the merits of the issues raised by the applicant.

10. Mrs. Rema Smrithi, the learned counsel appearing for the applicant would submit that the very fact that the Government of Andhra Pradesh by virtue of publishing two G.Os dated 28.02.2015 and 22.05.2015 in the Gazette notification, allocating lands specifically for the purpose of establishing Medical College and Super Speciality Hospital and High precision and sophisticated CNC machines manufacturing project, shows that the allotment is for industrial activities, which are admittedly, Red Category

Units. According to her, when once the Central Government has notified 2 kms from North to South all along western boundary of Puicat Bird Sanctuary in the State of Andhra Pradpesh as Eco Sensitive Zone , the proposed units for which the allotment has been made by the Government, which are admittedly, Red Category units, and are situated within 2 kms of ESZ, cannot be permitted to have such establishments in the said place. The purpose of the allotment having been explained in the Government Orders, it cannot now be denied by the Government and therefore, the proposed activity being prohibited activity, there is no right on the part of the 6<sup>th</sup> or 7<sup>th</sup> respondent to proceed with the activities within 2 kms. When the Notification of the Government of India is very clear that the proposed activities are prohibited activities, there is no question of carrying on any non permissible activity in respect of the lands allotted for the specified purposes in the Government Orders. Therefore, it cannot be said that the application is either pre-mature or not maintainable. She has also referred to the Notification issued by the Government of India and explained the Orders issued by the Government of Andhra Pradesh in making allotments.

11. Per contra, it is the contention of Mrs.Yasmeen Ali, the learned counsel appearing for the respondents 2 to 5 that mere allotment of lands does not confer any conveyance and any right to the 6<sup>th</sup> and 7<sup>th</sup> respondents unless proper conveyance is completed. According to her, even thereafter, the Project Proponent has to approach the State Pollution Control Board for consent and if it is within the prohibited distance, as per the Eco Sensitive Zone Notification issued by the Government of India, the Board will take care of the situation and the applicant cannot presume that the 6<sup>th</sup> and 7<sup>th</sup> respondents will straightaway proceed with the industrial activities. It is also submitted that if the allotment is admittedly changed by the Government for any permissible activity, the applicant cannot raise any

objection. When posed with a question that the purpose for which allotment of lands has been made by the Government of Andhra Pradesh in very clear terms in the two Government Orders, how a stand can be taken that it is a permissible activity, in the light of Eco Sensitive Zone Notification, the learned counsel would submit that the Government may take a decision to withdraw the Government Orders and think of permitting any permissible activity as per Eco Sensitive Zone Notification. In any event, it is her case that the application is pre-mature. That apart, it is her case that the allotment made to 6<sup>th</sup> and 7<sup>th</sup> respondents being challenged by the applicant before this Tribunal, is not maintainable. That is also the contention of the learned counsel appearing for the 6<sup>th</sup> respondent, Mr.N.Jeyakumar. Mr. T.Sai Krishnan, the learned counsel appearing for the State Pollution Control Board, has submitted that even though the Health Care establishment and high precision and sophisticated CNC machines manufacturing project, are classified as Red Category Industries, in the absence of any application for "Consent" before the Board, the Board cannot make any comment about the issue involved in this case.

### **Discussion and Conclusion:**

12. After hearing the learned counsel appearing for the parties and referring to the pleadings as well as documents filed, one thing is clear that in respect of the declared Bird Sanctuary, namely, Pulicat Bird Sanctuary, the Government of India, Ministry of Environment , Forests and Climate Change (MoEF & CC) has made a final Notification on 26.06.2015 after following due procedure in declaring and notifying the area of 2 kms from North to South all along the western boundary of Pulicat Bird Sanctuary in the State of Andhra Pradesh as Eco Sensitive Zone, in exercise of its powers conferred under the Environment (Protection) Act, 1986 r/w Environment (Protection) Rules 1986. It is not in dispute and it is also on record that before such final

Notification was issued, the Central Government has issued a draft Notification on 03.01.2014 inviting objections and suggestions from the persons likely to be affected within a period of 60 days from the date when the Notification was made available to the Public, which was stated to be in public domain from 03.01.2014. The Notification, issued by the Central Government, takes note of the fact that the Pulicat lake is the second largest brackish water lagoon in India spread over Andhra Pradesh and Tamil Nadu, which attracts winter migratory birds and is an important feeding place for a variety of aquatic and terrestrial birds and is famous for a large number of migratory birds visiting during winter as lake offers food and protection from predators. The Notification also explains that the sanctuary is extended upto 460 sq.ms in Andhra Pradesh covering 5 Mandals of Tada, Sullurpet, Doravarisatram, Chittamur and Vakadu of Nellore District. The Notification explains about the boundaries of Eco Sensitive Zone in Annexure I in various directions, which is as follows:

#### **Detailed description of boundaries of the Eco-sensitive Zone:**

North: Eco-Sensitive Zone boundary of Pulicat Bird Sanctuary starts from 1Km distance from North Valamedu Village and proceeds towards Eastern direction for 2 Kms and joins at Bay of Bengal.

East: The boundary of the Pulicat Bird Sanctuary is the boundary of the Eco-sensitive Zone towards eastern side all along the shore line of Bay of Bengal upto inter-state boundary of Tamil Nadu and Andhra Pradesh at 750m northern side of Pulinjerikuppam village.

South: The Eco-sensitive zone line starts at inter-state boundary of Andhra Pradesh and Tamil Nadu at 750m Northern side of Pulinjerikuppam village and runs all along the Tamil Nadu State boundary towards South and then runs towards west side and then runs Northern side and ends at 200 meters western side of Arambakkam village.

West: The Eco-sensitive Zone lines starts from Tamil Nadu and Andhra Pradesh state boundary at a distance of 200 mtrs Western side of NH 5 near Karuru Village which is Station No.1 and the line runs along the Western side of NH5 at a distance of 200mts and crosses NH 5 at Tada, Srikalahasti Road Junction and joins at station No.2 which is the Railway crossing of Chenigunta village, and runs towards Northern direction

touching vatembedu Village at Station No. 3, and then the line runs towards northerly direction and touches at Station No.4 of Karijatha Village, then the line runs Western side and touches Station No.5 of Ulasapadava Irrigation Tank, then the line runs towards northerly direction and touches at Station No. 6 at Konepalli Village, then the line runs towards northerly direction touches at Station No.7 Sridhanamalli Village, then the line runs northerly direction touches at Station No. 8 near Aanegottam Village and then the line runs Northern direction touches Station No.9 at Pulatota Village, then the line runs Northern direction touches at Station No. 10 near Diguva varattur and then the line proceeds and touches Station No. 11 near Arur Village and then the line proceeds towards North-East direction touches at station No.12 at Kogili village and then the line proceeds towards eastern direction and touches No.13 near Kokkupalem Village, then the line proceeds towards northerly direction and touches at station No.14, then the line runs towards northerly direction and touches at Station No.15 near Andalamala Village, then the line runs towards North-East Direction and joins at Sea shore line of Bay of Bengal at Station No. 16 near Valamedu Village which is closed Station”.

Annexure III to the Notification categorizes such 23 Villages, which are outside the boundary of Pulicat Bird Sanctuary but falling within the Pulicat Bird Sanctuary Eco Sensitive Zone along with Longitudes and Latitudes. The following is the list of such villages in Annexure III.

#### **List of Villages falling within the Eco Sensitive Zone:**

<b>S. No</b>	<b>Name Of the Revenue Village</b>
1	Bheemunivari Palem Kuppam
2	Bheemunivari Palem
3	Pudi
4	Tada
5	Tada Kandriga
6	Vatambedu
7	Karijatha
8	Davadigunta
9	KCN Gunta
10	Kuditi
11	Mannemutturu Jarijana wada
12	Abaka
13	Togaramudi
14	Sridhanamalli
15	Kalluru Kandriga
16	Kattuvapalle

17	Kattuvapalle harijana wada
18	Singanalatturu
19	Yelluru
20	Pallamparthi
21	Kokkupalem
22	Duggarajapatnam
23	Thupilipalem

It shows that Pudi Village, in which, the lands are situated and allotted to 6<sup>th</sup> and 7<sup>th</sup> respondents, is shown falling within the Pulicat Bird Sanctuary Eco Sensitive Zone.

13. Clause 3 of the Notification speaks about the measures to be taken by the State Government and discusses about 12 issues which includes Land use, Natural Springs, Tourism, Natural Heritage, Man made heritage sites, Noise Pollution, Air Pollution, Discharge of effluents, Solid wastes, Biomedical wastes, Vehicular traffic and Industrial units. In respect of these aspects, except industrial units, various regulatory measures have been explained. However, while discussing about the industrial units in sub-clause 12, it states as follows:

“No new establishment of any industrial unit shall be permitted in the Eco Sensitive Zone”

Clause 4 enumerates the list of activities prohibited. The said clause contains a table which categorises 11 prohibited activities and 19 regulated activities. Under prohibited activities, serial no.2 in the table includes Industrial Units and prohibits namely, (i) establishment of new wood based industry shall not be permitted within the limits of Eco Sensitive Zone. (ii) No establishment of any new polluting or highly polluting industry within Eco Sensitive Zone. Permissible activities do not speak anything about any Medical units or Medical college or Colleges for that matter. Further, clause 5 constitutes a Monitoring Committee headed by the District Collector, Nellore. It shall monitor compliance of the provisions of the Notification. This being a final Notification issued by the MoEF & CC, after

following the due procedure, it is having statutory effect and therefore, the same has to be implemented in true spirit, as it forms part of the parent Act, namely, Environment (Protection) Act 1986. As far as the present two proposed industries, for which lands are allotted, it is true that it should be otherwise taken as at preliminary stage. But on a reading of two G.Os issued by the Andhra Pradesh Government, namely, G.O.Ms.No.21, dated 28.02.2015 and G.O.Ms.No.40 dated 22.05.2015 allotting 25 acres and 20 acres to 6<sup>th</sup> and 7<sup>th</sup> respondents respectively, it makes clear the purpose for such allotment by the Government which is for establishment of the said Institution and Industry. While the G.O itself states the purpose, for allotment of 25 acres of land to the 6<sup>th</sup> respondent for establishing a Medical College and Super Speciality Hospital and allotment of 20 acres to 7<sup>th</sup> respondent for establishment of high precision and sophisticated CNC machines manufacturing project, the reason for allotment has been made out clearly by the Government. It is also not in dispute that the allotted sites are situated within the area of 2 kms of the Eco Sensitive Zone Notified by the MoEF & CC. As long as the purpose for which the allotment is made and the sites are situated within the prohibited distance, particularly when the Notification prohibits establishment of any industrial activity, in our considered view, it cannot be contended as if the application is pre-mature. It is only realising the same, the learned counsel appearing for the State Government, in our view correctly, has expressed that the Government may change /alter the Orders, and if the Government alters by withdrawing the present two G.Os, there is absolutely no issue involved. But, as long as the two G.Os are in existence, the purpose and object, for which the allotment of lands were made explicitly clear, there is every reason for this Tribunal to anticipate that in the event of giving effect to such G.Os, the same will be totally against the intent and purport of ESZ Notification issued by MoEF & CC dated 26.06.2016. By virtue of Precautionary Principle, which is one of

the guiding factors for this Tribunal to follow, there is nothing wrong for this Tribunal to interfere even at this stage.

14. The fact that the sites allotted to the respondents 6 and 7 are situated within 2 kms of Eco Sensitive Zone is made categorically clear by the District Collector, Nellore District who happens to be the Chairman of the Monitoring Committee under Eco Sensitive Zone Notification of MoEF & CC dated 26.6.2015, wherein it is stated as follows:

"With regard to Eco Sensitive Zone, the Forest Range Officer Pulicat Bird Sanctuary, Sullurpet inspected the said lands along with Forest Beat Officer concerned, Dy.Zonal Manager, APIIC Ltd., Nellore and Environment Engineer, APIIC Ltd., Nellore and report that the said lands falls within the 2 KM of Eco Sensitive Zone of Pulicat Bird Sanctuary."

Further, the State Pollution Control Board in its reply has clearly stated that as per its guidelines the two proposed establishments are Red Category Industries. Paragraph 6 of the reply filed by the Pollution Control Board dated 27.05.2016 makes it abundantly clear, which is as follows:

"It is submitted that the Health Care establishment is categorized as a Red Category industry. Similarly, industry or process involving Metal surface treatment or process such as pickling / plating / electroplating / Paint stripping / heat treatment / Phosphating or finishing / Anodizing / enameling //Galvanizing is also classified as Red Category industry".

In view of the above said admitted position, we are of the considered view that the purpose for which the allotment of lands was made under the impugned orders cannot be carried out in the disputed site. It is always open to the Government to withdraw the two G.Os. The two G.Os intended for the specific purpose stated above as on date, cannot stand the scrutiny of law. It is always open to the Government to use the place for

any permissible activities as per the Eco Sensitive Zone Notification dated 26.06.2015.

15. In view of the above said findings, the application is allowed with a direction that the purpose for which the allotments made under G.O.Ms.No.21 dated 28.02.2015 and G.O.Ms.No.40 dated 22.05.2015 in favour of respondents 6 and 7 shall not be implemented since they are prohibited activities under ESZ Notification dated 26.06.2015 of MoEF & CC and consequently, there shall be an order of injunction against the respondents 1 to 5 from permitting any such prohibited activities within the said Eco Sensitive Zone and the said impugned G.Os shall not be given effect to. However, we make it clear that it will be always open to the Government to allot the sites by issuing a fresh G.O for any permissible activities under Eco Sensitive Zone Notification of MoEF & CC dated 26.06.2015. The application is ordered accordingly.

16. With the above direction, the application is ordered. There is no order as to costs.

Justice Dr.P. Jyothimani  
Judicial Member

P.S. Rao  
Expert Member