

Supreme Court rules against Ex-Post Facto Environment Clearance

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Introduction

On 16 May 2025, the Supreme Court in *Vanashakti v Union of India* 2025 SCC OnLine SC 1139 struck down the notification dated 14 March 2017 and Office Memorandum dated 7 July 2021 issued by the Ministry of Environment, Forest and Climate Change (MoEFCC) holding that *ex-post facto* Environmental Clearances (ECs) violate the constitutional right to a pollution-free environment under Article 21. The Court barred the government from issuing any future notifications allowing such post facto clearances but clarified that ECs already granted under the quashed notifications would remain unaffected. The Supreme Court judgment was passed in a group of matters inter alia challenging the constitutional validity of the 2017 notification and the 2021 office memorandum.

Environmental impact assessment study / EIA

The requirement to carry out an Environment Impact Assessment study or EIA was introduced in 1978-1979 for river valley projects and has since been extended to manufacturing industries, thermal power plants, mining activities, real estate and construction activities and more. In 1994, the Environmental (Protection) Act, 1986 made an EIA study mandatory for 29 categories of development projects with investments of more than ₹50 crores,¹ from 1994. This was India's first major legal framework on EIA. The EIA Notification of 14 September 2006² replaced the 1994 regime, requiring EIA to be carried out for 39 types of industrial operations and projects before any establishment or expansion. This 2006 notification remains in force and has undergone several amendments over time. An EIA study culminates in grant of Environmental Clearance or EC by MoEFCC.

Birth of Ex Post Facto – 2002 Circular

In 2002, the Ministry of Environment and Forests issued a circular allowing units that began operations without prior EC to apply for *ex-post facto* clearance by 31 March 2003 as a final opportunity.

The National Green Tribunal (NGT) quashed the 2002 circular for being inconsistent with the EIA Notification 1994 and held that *ex-post facto* ECs were legally unsustainable. NGT's view was upheld by the Supreme Court in *Alembic Pharmaceuticals v Rohit Prajapati*³ where the Court held that *ex-post facto* clearances violate fundamental principles of environmental jurisprudence, as EC must be granted only after processes such as a public hearing, screening, scoping etc. have been completed and grant of *ex-post facto* clearance would essentially condone the operation of industrial activities without the grant of an EC and could lead to irreparable harm to the environment.

The Court however, adopted a balanced stance, and overturned the NGT's order for closure of industries without EC and instead directed the industries to deposit ₹10 crores each for environmental restoration.

¹ Ministry of Environment, Forest and Climate Change

² <https://cpc.parivesh.nic.in/writereaddata/ENV/EnvironmentalClearance-General/18.pdf>

³ *Alembic Pharmaceuticals v Rohit Prajapati* [2020 (17) SCC 157]

March 2017 notification providing six-month window

In 2017 the MoEF&CC issued the 2017 notification granting a six-month window for projects operating in violation of the EIA Notification, 2006 and permitted such projects to apply for ex-post facto EC. The Madras High Court, in *Puducherry Environment Protection Association v Union of India*, did not interfere with the 2017 notification which it noted was a one-time relaxation, conditional on compliance with pollution norms and the “polluter pays” principle.

2021 office memorandum on SOP for identification and handling of violation cases

In 2021, the MoEF&CC published “Standard Operating Procedure (SOP) for identification and handling of violation cases”⁴ to address cases of violation of environmental norms where projects were set up or operating without a prior EC. The 2021 SOP provided that if a project was found “otherwise permissible,” Terms of Reference would be issued along with directions to complete environment impact assessment studies. Such cases would be subject to (i) damage assessment, (ii) remedial plan, and (iii) community augmentation plan, and the project proponent would have to pay an amount determined under the Polluter Pays principle. The project would then be appraised as a fresh proposal.

The constitutional validity of the 2021 SOP was challenged before the Madras High Court who initially stayed it and then quashed it in 2024, holding that under the EIA Notification 2006, only two categories exist: (i) prohibited projects and (ii) permissible projects and the SOP attempted to introduce a third, impermissible category of “otherwise permissible” projects. Appeals were also filed before the Supreme Court from the Madras High Court Order quashing the 2021 SOP.

The 2021 SOP was also stayed by the Supreme Court in 2024 in *Vanashakti v Union of India*.

Contentions before the Court

In *Vanashakti*, the petitioners contended that the 2021 SOP effectively sought to extend the benefit of the 2017 notification. They argued that authorities were continuing to accept new applications for ex-post facto ECs even though the window had closed in 2018.

MOEFCC contended that the 2021 SOP did not extend the timeline under the 2017 notification or allow ex-post facto ECs but instead held violators accountable through penalties and aimed to bring such industries under compliance of environmental norms.

Conclusion

The Supreme Court quashed the 2017 Notification and 2021 SOP holding that the EIA Notification, 2006 is intended to protect the environment and prevent pollution, and that ex-post facto ECs are fundamentally incompatible with Indian environmental law. It ruled that the 2017 notification’s “one-time opportunity” for violators applied only to projects operating without an EC as of 14 March 2017. The Court found that the 2021 SOP effectively granted retrospective ECs, thereby regularizing illegal operations, which was not permissible under environmental laws.

The Court emphasized that prior EC is non-negotiable and a project initiated without an EC constitutes a ‘gross illegality’. The Court further barred the government from issuing any future circulars or memoranda permitting such post facto clearances; however, the Court clarified that the ECs already granted under the two quashed notifications will remain unaffected.

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⁴ [https://environmentclearance.nic.in/writereaddata/OM/135319091\\$1_OM_07_07_2021.pdf](https://environmentclearance.nic.in/writereaddata/OM/135319091$1_OM_07_07_2021.pdf)



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