

Supreme Court Declares Post-Facto Environmental Clearances Illegal | Key Judgement Explained

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Post-Facto Environmental Clearance Latest News

- Recently, the Supreme Court declared as illegal the Ministry of Environment's 2017 notification that allowed ex-post facto environmental clearances — i.e., permissions granted after a project had already started.
- The court also struck down a 2021 office memorandum that laid out a procedure for granting such post-facto clearances.
- It further barred the Centre from issuing similar notifications or orders that violate the Environment Impact Assessment (EIA) Notification of 2006, reinforcing the principle that environmental approvals must be obtained before project execution.

EIA and the Need for Prior Clearance

- The Environment Impact Assessment (EIA) Notification, 2006 mandates prior environmental clearance for projects likely to impact the environment, human health, and social infrastructure.

- The process includes multiple stages: project screening, environmental impact study, public hearing, and expert committee review.
- Final clearance is granted or denied based on expert recommendations to ensure sustainable development.

2017 Notification and Post-Facto Clearances

- In March 2017, the Ministry of Environment issued a notification offering a one-time, six-month window for industries to seek clearance after starting operations or making changes without approval.
- This applied to projects that had begun without prior clearance, expanded beyond approved capacity, or altered their product mix.

Centre's Justification for Post-Facto Clearances

- The Centre argued it was better to **regulate violations** rather than leave them unchecked.
- Violators would be made to **pay for remediation and pollution**, nullifying any economic advantage from breaking the law.
- Simultaneously, state authorities and pollution control boards were expected to take action under the **Environment Protection Act, 1986**.

Centralised Appraisal and Expert Oversight

- All post-facto clearance cases, regardless of project size or category, were to be appraised **centrally**.
- Appraisal proceeded only if the project was permissible at its site; otherwise, closure was recommended.
- A committee headed by **S R Wate** (ex-NEERI Director) appraised violation cases, meeting **47 times** between 2017 and 2021.

SOP Introduced in 2021

- A Standard Operating Procedure (SOP) was issued in July 2021 to standardise the handling of violation cases, following a National Green Tribunal directive.

Supreme Court Criticises Centre for Protecting Environmental Violators

- The bench of Justice Abhay S Oka and Justice Ujjal Bhuyan criticised the Centre for issuing orders that effectively protected violators of environmental norms.
- The Court questioned whether development should come at the cost of environmental degradation.

Violation of Fundamental Rights

- The Court held that the 2017 Notification and 2021 Office Memorandum (OM) violated:
 - **Article 21** – Right to life, which includes the right to a **healthy, pollution-free environment**.
 - **Article 14** – Right to equality before law, as the OM extended protection to violators **fully aware** of the legal consequences.
- It cited **Delhi's pollution crisis** to highlight the devastating effects of unchecked environmental harm.

SC Rejects Centre's One-Time Justification

- The Supreme Court reminded the Centre of its earlier undertaking before the Madras High Court, where it claimed the 2017 notification was a **one-time exception**.
- The SC ruled that even a one-time exemption was unconstitutional, as it undermines the public's **right to a clean environment**.

Illegality of Post-Facto Clearances

- The Court cited ***Common Cause v. Union of India (2017)*** and ***Alembic Pharmaceuticals v. Rohit Prajapati (2020)*** to reaffirm that ex-post facto clearances are alien to environmental law.
- Such clearances violate the foundational principles of the Environment Impact Assessment (EIA) notification.

2021 Office Memorandum Violated Judicial Orders

- The bench criticised the Centre for issuing the 2021 Office Memorandum, which allowed retrospective clearances, despite earlier Supreme Court rulings against it.
- It held that this regularised illegal actions of starting projects without prior environmental clearance.
- The Court observed that the Centre intentionally avoided using the term “ex-post facto” in the SOP, but the substance and effect remained the same.
- It labelled the move as “clever drafting” to circumvent previous judicial restrictions.

Reaffirmation of Environmental Jurisprudence

- In the ***Alembic Pharmaceuticals case***, the SC had clearly ruled that post-facto approvals were against environmental principles and should not be permitted.
- The current bench reiterated that such actions are a direct affront to the rule of law and ordered the Centre not to reintroduce such mechanisms in any form.

Post-Facto Environmental Clearance FAQs

Q1. What did the Supreme Court rule on post-facto environmental clearances?

Ans. The SC declared post-facto clearances illegal, citing they violate fundamental rights and environmental law principles under the EIA 2006.

Q2. What was the Centre's justification for the 2017 notification?

Ans. The Centre claimed it regulated past violations, enforced penalties, and avoided economic disruptions by allowing one-time regularisations.

Q3. How did the Court view the 2021 Office Memorandum?

Ans. The Court criticised it as a disguised attempt to regularise illegal projects, contradicting earlier judicial pronouncements on EIA norms.

Q4. What constitutional rights did the Court say were violated?

Ans. The Court held the clearances violated Article 21 (right to life) and Article 14 (equality before law).

Q5. What precedents did the Supreme Court cite?

Ans. It cited Common Cause (2017) and Alembic Pharmaceuticals (2020) cases, both rejecting ex-post facto approvals in environmental jurisprudence.

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