

NO RETROSPECTIVE ENVIRONMENTAL CLEARANCE: ENVIRONMENT

NEWS: Supreme Court prohibits retrospective environmental clearances — scraps government notifications

WHAT'S IN THE NEWS?

The Supreme Court has declared retrospective (post-facto) Environmental Clearances (ECs) illegal, reinforcing that prior EC is mandatory before project initiation.

This verdict upholds the “Polluter Pays” principle and strengthens environmental rule of law against regulatory evasion.

Context of the Ruling:

- The Supreme Court of India ruled that retrospective (post-facto) Environmental Clearances (ECs) are illegal.
- It struck down the 2017 Notification, 2021 Office Memorandum, and related circulars issued by the Ministry of Environment, Forest and Climate Change (MoEFCC) that allowed post-facto approvals.
- The verdict aims to ensure that environmental assessments are conducted before any project begins, not after damage has occurred.

About Environmental Impact Assessment (EIA):

- EIA is a critical tool used to assess the potential environmental consequences of a proposed project.
- It considers socioeconomic, cultural, and health impacts along with ecological degradation.
- Under India's EIA Notification (2006), projects listed in the schedule must receive prior EC from authorities before construction or expansion.

Supreme Court's Key Observations:

- Retrospective ECs are illegal: The court declared that granting ECs after a project has already started or caused environmental harm is a gross violation of environmental principles.
- Struck down instruments enabling post-facto approvals: The 2017 Notification, 2021 Office Memorandum, and earlier circulars were called arbitrary, unconstitutional, and violative of environmental jurisprudence.

- No nullification of past approvals: While disallowing future post-facto ECs, the Court upheld ECs already granted under these now-invalid instruments, to avoid retrospective nullification and disruption.

Reinforcement of the “Polluter Pays” Principle:

- The ruling reaffirmed that the polluter must bear the cost of environmental harm.
- Post-facto clearances undermined this principle by retroactively legitimizing illegal operations without imposing penalties.
- Allowing such ECs would normalize violations and reduce deterrence against environmental harm.

Environmental Justice vs. Ease of Business:

- The Court asserted that environmental protection takes precedence over bureaucratic or economic convenience.
- Criticized the Centre’s “crafty drafting” to enable retrospective ECs, allowing defaulting industries to avoid scrutiny.
- Stressed that true development is inclusive of environmental conservation, and not merely economic expansion.

Why Prior EC is Necessary:

- Ensures that the ecological and social consequences are examined before irreversible actions are taken.
- Enables informed public participation and prevents environmental degradation at the source.
- Retrospective clearance allows destruction to occur without foresight, which defeats the purpose of EIA.

Comparative Practices in Developed Nations:

- United States:
 - Under the National Environmental Policy Act (NEPA), 1969, agencies must conduct Environmental Impact Statements (EIS) or Environmental Assessments (EA) before federal project approval.
- United Kingdom:

- ECs are governed by the Town and Country Planning Act, 1990, and EIA Regulations, 2017, requiring detailed assessments for major infrastructure before granting planning permission.
- France:
 - The Environmental Code mandates EIAs for large or classified projects.
 - Oversight is provided by the Environmental Authority (Autorité environnementale) to ensure compliance with ecological standards.

Implications for Industries and Regulatory Bodies:

- Stricter compliance requirements:
 - All project developers must now seek prior ECs, or risk facing project shutdown, legal action, or demolition orders.
- End of post-facto culture:
 - Ministries and State Environmental Impact Assessment Authorities (SEIAAs) can no longer regularize illegalities through backdated ECs.
- Legal risk for violators:
 - Industries proceeding without ECs may face prosecution, environmental compensation, and delays in project execution.
- Greater public participation:
 - Verdict may push for a more transparent EIA process with increased space for public hearings and objections before clearance is granted.

Reaffirmation of Judicial Role in Environmental Governance:

- The verdict is a landmark in strengthening the rule of law in environmental protection.
- Demonstrates the judiciary's commitment to upholding Article 21 (Right to Life) and sustainable development.
- Sets a powerful precedent to ensure environmental laws are not diluted under economic or political pressure.

Conclusion:

- The Supreme Court's judgment marks a watershed moment in Indian environmental jurisprudence.
- It balances development and conservation by mandating proactive compliance with environmental norms.
- With the court barring retrospective ECs, the ruling is likely to lead to a more responsible industrial and infrastructure growth framework in India.

Source: <https://timesofindia.indiatimes.com/india/sc-bars-centre-from-granting-retrospective-green-clearances/articleshow/121241590.cms>