



## CASE SUMMARY: VANASHAKTI V. UNION OF INDIA (2025)

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**Bharat Jayan\***

### FACTS

The constitution of our country has several safeguards meant to keep a check on activities considered as development that may harm the environment through effects like pollution. These provisions served to create the Environmental (Protection) Act, 1986 and the Environmental (Protection) Rules, 1986. According to the provisions in these pieces of legislation, a novel concept known as Environmental Impact Assessment was brought into force in 2006 through the Environmental Impact Assessment Notification, issued on 14 September 2006. It mandated prior Environmental Clearance (EC) issued by a regulatory authority for several kinds of projects.

In March 2017, the Ministry of Environment, Forest and Climate Change (MoEFCC) issued a notification which stated that EC can be granted for projects that had already started the work on site or had expanded or altered production beyond the limits of the EC.<sup>1</sup> Furthermore, the notification had also said that projects that were in violation of the EIA notification as of the date of its publication were eligible to apply for ex-post facto EC within a period of six months. This was put into executive action through the issuance of an Office Memorandum in July 2021.

A case in the Madras HC, titled Puducherry Environment Protection Association v. Union of India, challenged the notification and the memorandum. While the HC order found the Office Memorandum unconstitutional, it stated that the judgment was to be applied prospectively,

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<sup>1</sup> Legal Maestros, Vanashakti v. Union of India: Analysing the Supreme Court's rejection of retrospective environmental clearances Legal Maestros - Keeping Pace with Legal Change (2025), <https://legalmaestros.com/current-legal-update/vanashakti-v-union-of-india-analyzing-the-supreme-courts-rejection-of-retrospective-environmental-clearances/#:~:text=Vanashakti%20v.,Union%20of%20India:%20Analyzing%20the%20Supreme%20Court's%20Rejection%20of%20Retrospective,the%20interest%20of%20sustainable%20development> (last visited Aug 23, 2025).

which meant that projects that had received ex-post facto clearances were not affected. These policies and orders were challenged by an NGO named Vanashakthi as being arbitrary and in violation of the EP Act.

## ISSUES RAISED

The issues that were considered by the court in this case are as follows:

1. Whether the 2017 Notification permitting ex-post facto Environmental Clearances was valid.
2. Whether the 2021 Office Memorandum from the MoEFCC establishing a Standard Operating Procedure to provide ex-post facto Environmental Clearances was valid.
3. Whether the decision of the Madras HC prospectively invalidating the OM was the correct stand to be taken?<sup>2</sup>

## CONTENTION

**Petitioners:** The petitioners focused on the claim that the EP Act and the 2006 Notification mandate a prior EC before commencing certain categories of projects. This was used to advance the contention that the 2017 Notification and the 2021 OM altered the directives that were established law, something that the executive cannot do by subordinate legislation.

Regarding the 2021 OM, the petitioners contended that it was an executive action to legalise something that was impermissible ab initio. The creation of an SOP to institutionalise ex-post facto ECs amounts to undermining the EP Act and thus the authority of the legislature.

The petitioners also claimed that the Madras HC order was erroneous as its prospective application was not compatible with something that is void ab initio. The reasoning that the HC had given to justify its decision, which was purportedly to safeguard the interests of investors, was also challenged as being arbitrary.

**Respondent:** The Union of India, which was the respondent, argued that the ex-post facto ECs were a necessary step to ensure development pragmatically. It claimed that in a lot of instances, violations occurred due to a lack of awareness or technical lapses. Imposing the condition of a prior EC absolutely could lead to the extinguishing of such projects in the name of

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<sup>2</sup> Vanashakti vs Union of India, 718 indiankanoon.org (2025), <https://indiankanoon.org/doc/44390976/> (last visited 2025).

technicalities. Ex-post facto ECs were argued to bring a balance between development and environmental protection.

The government further claimed that the SOP created according to the 2021 OM was not to facilitate violations but to provide a procedure to disclose violations, pay penalties, and continue projects by implementing remedial measures. Regarding the Madras HC judgment, the respondents argued that its prospective application was necessary to prevent chaos and the economic downturn that would be created if all ex-post facto ECs given since 2017 were nullified.

## **RATIONALE**

The court used several reasons to justify its interpretation that prior ECs are a mandatory requirement. First of all, it highlighted the contention of the petitioner that the directions given in the EP Act and EIA Notification of 2006 establish that ECs are supposed to be taken before developmental projects. It highlighted the purpose of the EC, which is to study the possible environmental impacts that a project could entail and to stop any irreversible damage before it occurs. The court also relied on earlier cases like *Common Cause v. Union of India* of 2018<sup>3</sup> and *Alembic Pharmaceuticals v. Rohit Prajapati* of 2020,<sup>4</sup> which explicitly mandates prior ECs, to bring home its view that ex-post facto ECs are not suitable for the environmental jurisprudence in India.

Striking down the 2017 Notification and the 2021 OM, the court noted that these were administrative instruments that do not have the power to rewrite or dilute the power of the legislative directions that preceded them, which in this case is the EP Act. The intention of these administrative instruments to set up a governance framework to permit and regulate the issuance of ex-post facto clearances was seen by the court as an attempt to undermine the existing requirement of prior clearances, which was mandated by statute.<sup>5</sup>

The court also agreed with the arguments put forward by the petitioners with respect to the issue regarding the validity of the Madras HC order. It reasoned that once an instrument is

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<sup>3</sup> *Common Cause (A Regd. Society) vs Union of India*, 1665 indiankanoon.org (2018), <https://indiankanoon.org/doc/184449972/> (last visited 2025).

<sup>4</sup> *Alembic Pharmaceuticals Ltd. vs Rohit Prajapati*, 445 indiankanoon.org (2020), <https://indiankanoon.org/doc/135723482/> (last visited 2025).

<sup>5</sup> Abhijeet Das, Supreme Court ends the era of ex post facto environmental clearances Lex Counsel (2025), <https://lexcounsel.in/newsletters/supreme-court-ends-the-era-of-ex-post-facto-environmental-clearances/> (last visited Aug 23, 2025).

found to be void, it is void ab initio rather than from the date of a judgment. But in the interest of safeguarding economic interests, the court did allow a limited exception. This allowed ECs issued from 2017 till 16 May 2025 to remain in force, but outlawed all clearances issued after that date. Furthermore, to avoid such instances of executive overstepping into the domain of the legislature, the court also prohibited the Union government from issuing a notification or circular legalising ex-post facto ECs.

### **DEFECTS OF THE LAW**

The court highlighted that the grant of ex-post facto ECs to projects on a case-by-case basis, as mentioned in the 2017 Notification, and according to a category of allowed/permissible projects, as said in the 2021 OM, violates the EP Act and Rules. Furthermore, this violation leads to a scenario where penalties may be attracted under Section 15 of the 1986 Act. The section also states that the payment of the penalty does not lead to the project being given approval. Instead, the project has to be terminated. Thus, the impugned notification and the OM led to the scenario whereby they regularise activities that are explicitly banned under a statute and the rules associated with it.

Furthermore, paragraph 14 of the 2017 Notification states that only projects that were in violation before 14 March 2017 could receive ex-post facto ECs, thus barring projects after the said date from being issued clearances. The issuing of the 2021 OM, however, leads to a scenario where even projects after 14 March 2017 could receive clearances, thus legalising something that was not possible by the 2017 Notification. This was another major defect that spelt the end of the road for these instruments.

The unconstitutionality of the impugned provisions is also emphasised by their violation of Article 21, one of the primary Fundamental Rights. Article 21 guarantees the citizens the right to live in a pollution-free environment. The 1986 Act was enacted to implement this right. Furthermore, the effects of climate change are becoming more apparent in recent times, with striking examples like a drastic increase in AQI in several Indian metropolises due to unregulated development. In this context, administrative diktats like the 2017 Notification and the 2021 OM amount to a violation of the Fundamental Right given under Article 21 due to their failure to address the damage that could be caused to the environment through unregulated developmental activities.

## INFERENCE

The judgment is consequential both because of its simple reasoning and also its powerful stand in favour of environmental protection. The judgment does not blatantly ignore the necessity of economic development, which is quintessential in the country. This has been reflected in the decision of the court to give a partial exception to allow projects that received clearances after the issuance of the 2017 order and before 16 May 2025 to continue. Thus, it can be seen that the court did not take a dogmatic position in favour of environmentalism but acknowledged the needs of the country and its people.<sup>6</sup>

This acknowledgement of practical realities was also coupled by the court with strong directives to ensure that such an act of executive high-handedness, which can have long-term damage, cannot occur again. This was ensured decisively by barring the government from implementing any policy to issue ex-post facto ECs through any official channel. Furthermore, striking down the impugned provisions highlighted that any attempt at subverting the structure of the separation of powers will be scrutinised and rectified by the judiciary. Thus, the court achieved the dual goals of ensuring environmental protection and ensuring the resilience of the checks and balances that maintain the separation of powers between the pillars of the Indian state.

Another aspect that the judgment highlights was the approach of the bench regarding the HC judgment. The fact that it ruled that the application of prospective overruling put to use by the lower court was a faulty approach shows how the higher court alters and quashes errors made by the lower court in judgments. Alongside that, it can be seen that the SC maintained the exception to projects which was ruled by the Madras HC. This shows how the court in this case took a flexible approach to dealing with the lower court judgment, rectifying the errors in law while validating the aspects of the judgment that were suitable.

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<sup>6</sup> Tejas Hinder Bose Varghese, *Vanashakti v. Union of India: Supreme Court puts an end to ex-post facto environmental clearances* India Corporate Law (2025), <https://corporate.cyrilamarchandblogs.com/2025/06/vanashakti-v-union-of-india-supreme-court-puts-an-end-to-ex-post-facto-environmental-clearances/> (last visited Aug 23, 2025).