दि उड़ीसा मिनरलस् डेवलपमेंट कंपनी लिमिटेड
(भारत सरकार का उद्यम)

THE ORISSA MINERALS DEVELOPMENT CO. LTD.
(A Government of India Enterprise)

ଦି ଓଡ଼ିଶା ମିନେରାଲ୍ସ୍ ଡେଭେଲପ୍‌ମେଣ୍ଟ କମ୍ପାନି ଲିମିଟେଡ୍
(ଭାରତ ସରକାରଙ୍କ ସଂସ୍ଥା)

Ref no: BSE, NSE & CSE/OMDC/CS/07-2026/01
Dated: 31.07.2026

To The Compliance Department Department of Corporate Services Bombay Stock Exchange Ltd 1st Floor, PhiozeJee, Jeebhoy Towers Bombay Samachar Marg Mumbai – 400001 **Scrip Code : 590086**	To The Compliance Department National Stock Exchange of India Limited Exchange Plaza, Plot No. C/1, Block – G Bandra Kurla Complex Bandra (E) Mumbai - 400051 **Scrip Code : ORISSAMINE**	To The Secretary The Calcutta Stock Exchange Limited 7, Lyons Range Kolkata- 700001 **Scrip Code : 25058**

SUBJECT: **ORDER DT. 29.07.2026, PASSED BY THE SUPREME COURT IN WRIT PETITION (C) NO. 1394 of 2023. [VANASHAKTI CASE]**

REF: **GRANT OF EC, FOR BELKUNDI MINES OF OMDC BY MoEF & CC.**

Dear Sir,

Earlier Hon'ble Supreme Court of India vide judgment dated 16.05.2025 had held that the 2017 notification and the 2021 OM as well as all circulars/orders/OMs/notifications issued for giving effect to these notifications are illegal and were thereby struck down. Resultantly, the proposal for grant of EC was delisted by MoEF&CC on 31.05.2025 refereeing to the above judgment of the SCI passed in WP (Civil) 1394/2023 (Case of Vanashakti vs. Union of India).

However, the Hob'ble Supreme Court in its order dated 29.07.2026 (received from the SCI website on 30.07.2026) reviewed its earlier order and altered to the extent as under:

a. ECs granted to project proponents under the 2017 Notification and the 2021 OM till date shall remain valid, unless otherwise challenged on merits. [para 79(a)]
b. All pending applications made by project proponents under the 2017 Notification or the 2021 OM shall be taken to their logical conclusion in accordance with law. [para 79(b)]
c. Any application dismissed, returned or delisted solely with reference to the stay order dated 02.01.2024 and/or the judgment in Vanashakti-I may be reconsidered by the authority concerned in light of the observations made in this judgment, particularly the prospective quashing of the 2021OM. [para 79(c)]
d. No fresh application for grant of EC under the aforesaid instruments shall be entertained. [para 79(d)].

In view of the above, the proposal for grant of EC in favour of Belkundi Iron and Mn. Mines of OMDC is ordered to be restored to its prior stage of delisting on 31.05.2025, for reconsideration.

However, it is significant to note that in the meantime, on 28.07.2026, the MoEF&CC, has already considered the proposal and recommended favourably for grant of EC in favour of Belkundi Iron and Mn. Mines of OMDC subject to the outcome of the judgment dated 29.07.2026 and fulfillment of certain other conditions. (Intimated vide letter dtd.28.07.2026).

As the Hon'ble SCI vide its judgment dated 29.07.2026 has held the 2017 Notification valid, the process for grant of EC can be initiated by the authority concerned subject to fulfilment of other conditions as intimated earlier vide our letter ref. dated 28.07.2026.

Copy of the SC order on dtd. 29.07.2026 is enclosed for kind reference.

For kind information & record.

Thanking You,

Yours faithfully,

For ***The Orissa Minerals Development Company Limited***

Pintu Kumar Biswal
Digitally signed by Pintu Kumar Biswal
Date: 2026.07.31 03:09:24 +05'30'

(Pintu Kumar Biswal)
Company Secretary

2026 INSC 761

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

Writ Petition (C) No. 1394 of 2023

Vanashakti .... **Petitioner(s)**

VERSUS

Union of India .... **Respondent(s)**

WITH

Writ Petition (C) No.118/2019

AND

Writ Petition (C) No.115/2024

SLP (C) No.8187/2025

Civil Appeal Nos.381-382/2025

Diary No.32452/2025 in Writ Petition (C) No.1394/2023

Diary No.38374/2025 in Writ Petition (C) No.1394/2023

Diary No.41575/2025 in Writ Petition (C) No.1394/2023

Diary No.42533/2025 in Writ Petition (C) No.1394/2023

Diary No.45781/2025 in Writ Petition (C) No.1394/2023

Diary No.46181/2025 in Writ Petition (C) No.1394/2023

Diary No.46353/2025 in Writ Petition (C) No.1394/2023

Diary No.46817/2025 in Writ Petition (C) No.1394/2023

Diary No.46844/2025 in Writ Petition (C) No.1394/2023

Diary No.46855/2025 in Writ Petition (C) No.1394/2023

Diary No.47015/2025 in Writ Petition (C) No.1394/2023

Diary No.47366/2025 in Writ Petition (C) No.1394/2023

Diary No.47388/2025 in Writ Petition (C) No.1394/2023

Diary No.47856/2025 in Writ Petition (C) No.1394/2023

Diary No.47865/2025 in Writ Petition (C) No.1394/2023

Diary No.48098/2025 in Writ Petition (C) No.1394/2023

Diary No.48100/2025 in Writ Petition (C) No.1394/2023

Diary No.48359/2025 in Writ Petition (C) No.1394/2023

Diary No.48761/2025 in Writ Petition (C) No.1394/2023

Diary No.48909/2025 in Writ Petition (C) No.1394/2023

Diary No.49260/2025 in Writ Petition (C) No.1394/2023

Diary No.49463/2025 in Writ Petition (C) No.1394/2023

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Joymalya Bagchi, J.

1. Delay condoned. Permission to file MAs is granted.

INTRODUCTION

2. In an anthropocentric world where man shapes nature to meet his wants, this Bench is entrusted with the solemn duty to strike a balance between an existential right of all living beings both present and future to a pollution-free environment and an aspirational right to development of a sixth of the world's population. To discharge such onerous responsibility, we need to examine the issue through the prism of eco-centric proportionality which is best articulated in the Gandhian vision:

> "*The world has enough for everyone's need,*
> *but not enough for everyone's greed.*"

3. Facts leading up to the present dispute are as follows:

(i) The Writ Petitions,[1] *inter alia*, challenge the notification dated 14.03.2017[2] and the office memorandum dated 07.07.2021[3]

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[1] First, W.P.(C) No. 1394 of 2023 challenges the 2021 Office Memorandum as arbitrary and ultra vires the Environment (Protection) Act, 1986, and seeks a restraint on the processing of applications for ex post facto environmental clearance after 13.05.2018. Second, W.P.(C) No. 118 of 2019 challenges the 2017 Notification and seeks the identification of real estate projects undertaken without prior environmental clearance, with consequential action and damages. Third, W.P.(C) No. 115 of 2024 challenges both instruments and seeks a restraint against any instrument permitting ex post facto environmental clearance.

[2] Hereinafter 'the 2017 Notification'.

[3] Hereinafter 'the 2021 OM'.

issued by the Ministry of Environment, Forest and Climate Change.[4] The impugned instruments enable appraisal and grant of post facto environmental clearance[5] to projects which violate the prior EC requirement under the EIA Notification, 2006.[6] The Civil Appeals[7] assail the judgment dated 30.08.2024 in *Fatima v. Union of India,*[8] whereby the Madras High Court quashed the 2021 OM, along with another office memorandum dated 19.02.2021,[9] with prospective effect. The challenge is confined to the prospective operation of that judgment. During the pendency of these proceedings, the State of Tamil Nadu also challenged the decision in *Fatima* (supra) by way of Civil Appeal No. 8253 of 2026. Vide order dated 26.05.2026, that matter was directed to be listed after pronouncement of the judgment in the present proceedings.[10]

(ii) The matters first came up for hearing before a two-Judge Bench of this Court. The Bench *vide* interim order dated 02.01.2024

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[4] Hereinafter, 'MoEFCC'.
[5] Hereinafter, 'EC'.
[6] Hereinafter, '2006 Notification'.
[7] By judgment dated 30.08.2024 in *Fatima v. Union of India* in WP(MD) No. 8866 of 2021 and WP(MD) No. 11757 of 2021, a Division Bench of Madras High Court quashed the 2021 Office Memorandum and another Office Memorandum dated 19.02.2021, but declared its judgment prospective and protected pending applications. Civil Appeal Nos. 381-382 of 2025 are directed against the prospective operation alone.
[8] 2024 SCC OnLine Mad 4514.
[9] Office Memorandum dated 19.02.2021 bearing F. No. 19-27/2015-IA.III issued by the MoEFCC. By this OM, the Ministry laid down the procedure for dealing with cases of violation of the CRZ Notification, 2011, namely projects in the coastal zone commenced without prior clearance.
[10] Order dated 26.05.2026 in Civil Appeal No. 8253 of 2026 titled *State of Tamil Nadu & Anr. v. Fatima & Anr.*

stayed the operation of the 2021 OM.[11] By judgment dated 16.05.2025, the Bench struck down both instruments, holding the grant of an ex post facto EC to be alien to environmental jurisprudence. It restrained the Central Government from issuing any similar instrument in the future.[12]

(iii) Review was sought against the said judgment by the Confederation of Real Estate Developers of India (‘*CREDAI*’) and was directed to be heard in open court. Oka J. having demitted office, the then Chief Justice of India constituted a three-Judge Bench comprising himself, Chandran J. and Bhuyan J., the other member of the erstwhile Bench in *Vanashakti-I*, to hear the review. By judgment dated 18.11.2025, the review Bench, by a majority of 2:1 (Bhuyan J. dissenting), allowed the review petition.[13] *Vanashakti-I* was recalled and the matters were restored to their file and number, whereupon they were placed before this Bench.

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[11] Interim order dated 02.01.2024 was passed in W.P.(C) No. 1394 of 2023. Later, two clarificatory orders dated 02.02.2024 and 17.12.2024 were passed protecting expansion applications where prior EC existed before 07.07.2021, made under provisions other than the 2021 OM.

[12] *Vanashakti v. Union of India*, 2025 INSC 718 : 2025 SCC OnLine SC 1139 (Oka and Bhuyan JJ.), hereinafter ‘*Vanashakti-I*’.

[13] *Confederation of Real Estate Developers of India v. Vanashakti*, 2025 INSC 1326 : 2025 SCC OnLine SC 2474 (Gavai C.J., Chandran and Bhuyan JJ.), hereinafter ‘the Review order’.

SUBMISSIONS

4. Submissions were advanced at length by the parties. Written submissions have also been filed on behalf of various States as well as project proponents. The arguments advanced for and against the validity of the impugned notification and the OM are summarised in the paragraphs that follow.

5. The petitioners, represented by Shri Gopal Sankaranarayanan, Shri Sanjay Parikh, Shrishti Agnihotri and other learned counsel, have vehemently argued that the 1994 Notification and, more particularly, the 2006 Notification envisage a prior EC for specified projects. The word '*prior*' was expressly incorporated in the 2006 Notification, making a prior environmental impact assessment the *sine qua non* of the clearance regime under the law. They refer to paragraphs 2, 6 and 7 of the notification,[14] which require the authorities to apply their mind to the environmental impact of a project before it is commenced, particularly at planning and siting stage. The notifications articulate the precautionary principle, giving legislative acknowledgment to the environmental jurisprudence laid down by this Court in *Vellore Citizens' Welfare*

[14] Under the 2006 Notification, prior EC is mandatory before any construction work or preparation of land, except work to secure the land (Clause 2). Clause 6 requires an application before the commencement of any activity, and Clause 7 prescribes the four stages of screening, scoping, public consultation and appraisal.

Forum v. Union of India.[15] Beyond the statutory framework, the grant of an ex post facto EC also violates Articles 14 and 21 of the Constitution. It arbitrarily forecloses the right of affected persons to meaningful participation through public consultation. It imperils the right to a clean and healthy environment. The notifications fell for interpretation in *Common Cause v. Union of India*[16] and *Alembic Pharmaceuticals Ltd. v. Rohit Prajapati,*[17] where this Court in no uncertain terms laid down that a post facto EC is an anathema to environmental law.

6. That ratio, the petitioners submit, was not differed from in *Electrosteel Steels Ltd. v. Union of India,*[18] *Pahwa Plastics (P) Ltd. v. Dastak NGO,*[19] and *D. Swamy v. Karnataka State Pollution Control Board.*[20] Post facto ECs were granted in those cases in their peculiar facts, to do complete justice between the parties. They further submit that the observations of Gavai C.J. in the Review order do not correctly interpret the aforesaid decisions. In any event, such observations are not the ratio of the Review order as

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[15] *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647, ¶¶ 13 and 14. In proceedings against the discharge of untreated effluents by tanneries in Tamil Nadu, this Court held that the precautionary principle and the polluter pays principle are essential features of sustainable development and part of the environmental law of the country.
[16] *Common Cause v. Union of India*, (2017) 9 SCC 499 (decided 02.08.2017).
[17] *Alembic Pharmaceuticals Ltd. v. Rohit Prajapati*, (2020) 17 SCC 157 (decided 01.04.2020).
[18] *Electrosteel Steels Ltd. v. Union of India*, (2023) 6 SCC 615 (decided 09.12.2021).
[19] *Pahwa Plastics (P) Ltd. v. Dastak NGO*, (2023) 12 SCC 774 (decided 25.03.2022).
[20] *D. Swamy v. Karnataka State Pollution Control Board*, (2023) 20 SCC 469 (decided 22.09.2022).

the concurring Judge restricted his concurrence to the ground that *Vanashakti-I* needed to be reviewed.

7. With regard to the 2017 Notification, the petitioners contend that it was expressly a one-time measure. The notification, they point out, opened a narrow window of six months within which projects in breach as on date of its issue i.e. 14.03.2017, could apply for EC upon complying with strict norms of damage assessment, remediation and community augmentation. When it was challenged in *Puducherry Environment Protection Association v. Union of India,*[21] the learned Additional Solicitor General undertook before the Madras High Court that it was a one-time measure, and it was on that undertaking alone that the challenge was disposed of. The window, they emphasize, was extended only once, until 13.04.2018, by the order of the High Court in *Appaswamy Real Estates Ltd. v. Puducherry Environment Protection Association.*[22]

8. Critiquing the 2021 OM, the petitioners submitted that the instrument is ostensibly clothed as a standard operating procedure formulated in terms of the NGT's order dated 24.05.2021 in *Tanaji*

[21] *Puducherry Environment Protection Association v. Union of India*, 2017 SCC OnLine Mad 7056 (decided 13.10.2017), hereinafter, '*Puducherry*', ¶ 4(i). The statement was treated as an undertaking of the Central Government in ¶ 4(n).

[22] *Appaswamy Real Estates Ltd. v. Puducherry Environment Protection Association*, 2018 SCC OnLine Mad 1283 (order dated 14.03.2018).

B. Gambhire v. Chief Secretary, Government of Maharashtra.[23] In effect, it is a post facto sanction regime running parallel to the prior sanction mandate of the 2006 Notification. It is neither circumscribed by a cut-off date nor tailored to a narrow amnesty window intended to secure compliance through remedial measures. Its scope erodes the 2006 Notification, and it could not have been issued in exercise of the delegated powers under Section 3 of the Environment (Protection) Act, 1986[24]. An ex post facto regime is also arbitrary, for it treats violators on par with compliant proponents, encourages a course of '*violate first, regularise later*' and violates the right to a clean environment guaranteed under Article 21.

9. Per contra, respondents led by learned Solicitor General Tushar Mehta and learned Additional Solicitor General Aishwarya Bhati appearing for the Union of India, along with Shri Abhishek Manu Singhvi for State of Telangana, Shri P. Wilson for State of Tamil Nadu and other learned counsel, contend that the observations in *Common Cause* (supra) must be understood contextually. The declaration that an ex post facto EC is alien to environmental jurisprudence does not rule out such clearances upon stringent

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[23] *Tanaji B. Gambhire v. Chief Secretary, Government of Maharashtra*, 2021 SCC OnLine NGT 961 (National Green Tribunal, Western Zone, O.A. No. 34 of 2020, order dated 24.05.2021).
[24] Hereinafter, '1986 Act'.

conditions in appropriate cases. The 2017 Notification was such a measure. It gave non-compliant projects an opportunity to apply for EC upon adhering to stringent damage assessment and remediation, and was thereby directed to control and abate environmental pollution within the scope of Section 3 of the 1986 Act. Neither the Act nor the 2006 Notification lays down the consequences of breach, that is, the manner in which erring proponents who have commenced activities without a prior EC are to be dealt with. To fill this lacuna, the NGT in *Tanaji B. Gambhire* (supra) directed that a proper Standard Operating Procedure be laid down for the grant of EC in such cases, addressing the gap between the binding law and the practice being followed. The 2021 OM was formulated in compliance with that direction and constitutes a graded regulatory response. It provides for the stoppage of prohibited activities along with prosecution and penalty. It requires permissible activities to be assessed on the anvil of the polluter pays principle, through damage assessment and a remedial action plan. Finally, it permits only such projects which meet the threshold of sustainable development. The OM thus seeks to supplement, and not supplant, the 2006 Notification.

10. The respondents draw sustenance from *Electrosteel* (supra), *Pahwa* (supra) and *D. Swamy* (supra) to show that restoration of the *status* *quo ante* in every case was neither envisaged by the 2006 Notification nor conducive to the abatement of pollution, and they strenuously argue that the Review order unequivocally endorses this position. With regard to public projects such as hospitals and roads, the learned Solicitor General further argued that the greater public interest in sustaining such projects must be borne in mind on proportionality principles. The project proponents, also press their interlocutory applications and submit that their projects are otherwise permissible in law. Some of them involving substantial public investment proceeded amidst regulatory uncertainty, while others have completed the process and await only the grant of clearance. It is urged that such projects ought to be considered under the 2021 OM regime like the projects already cleared. They contend that there is no disunity among the Judges on the reviewing Bench on this point, referring to paragraph 55 of the opinion of Bhuyan J.[25]

VANASHAKTI-I AND THE REVIEW

11. In *Vanashakti-I* the validity of the two impugned instruments first fell for adjudication, and both instruments were struck down in the

[25] The Review, per Bhuyan J., ¶ 55: "The applicant in Miscellaneous Application (Diary) No. 46855 of 2025 represented by the learned Solicitor General of India, Mr. Tushar Mehta, only seeks a clarification and a declaration that the benefit of protection extended to the ECs already granted under the 2017 Notification in Vanashakti should apply to the project of the applicant also. ... I am of the considered opinion that the concerns of the individual applicants are capable of being accommodated by way of appropriate clarification and/or modification of paragraph 35 of the Vanashakti judgment. For that, the entire judgment in Vanashakti is not required to be recalled."

first round. Oka J., speaking for the Bench, held that the object of protecting the environment and abating pollution had already been achieved by the 2006 Notification. The object of the 2017 Notification, in contrast, *"appears to be to protect the industries and entities which violated"* it.[26] The notification was held to be completely in violation of the law laid down in *Common Cause* (supra) and *Alembic* (supra). In view of that settled law, even a '*one-time measure*' or '*one-time relaxation*' was illegal. Such measures added to pollution and infringed the right to live in a pollution free environment guaranteed by Article 21.[27] Those who had proceeded without clearance were not illiterate persons. They were companies, real estate developers, public sector undertakings and mining industries who had knowingly committed illegality, and no equity arose in their favour.[28]

12. As to the 2021 OM, the Bench held that the instrument was in substance retrospective. Though it avoided the expression "ex post facto" and stipulated that a clearance would take effect only from the date of its grant, these devices could not disguise the fact that the OM operated to regularise projects which had been commenced without prior EC. It was held that the OM *"does not refer to exercise*

[26] *Vanashakti-I* (supra), ¶ 19.
[27] *Vanashakti-I* (supra), ¶ 20.
[28] *Vanashakti-I* (supra), ¶ 23.

of any power under the 1986 Act or the 1986 Rules”.[29] The Bench also found the OM objectionable on other grounds. The OM extended to projects commenced after 14.03.2017, which even the 2017 Notification did not permit. It was inconsistent with the solemn undertaking recorded by the Madras High Court in *Puducherry* (supra) that the 2017 Notification was clearly and certainly only a one-time measure.[30] Court held that the Government was bound to abide by that undertaking in letter and spirit. Section 15 of the 1986 Act was further read to imply that *“even if the penalty is paid by the project proponent, it will not regularise the project”*. The offending construction, whether under way or complete, therefore had to be stopped and demolished.[31] On these findings, both instruments were struck down as violative of Articles 14 and 21. The ECs already granted were left undisturbed. The Central Government was restrained from issuing any instrument providing for an ex post facto EC in any form.[32]

13. The Review order recalled *Vanashakti-I.* The lead opinion of Gavai C.J. records four grounds for recalling the judgment. Chandran J. concurred upon a narrower footing, which is considered separately.

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[29] *Vanashakti-I* (supra), ¶ 29. Also, Environment (Protection) Rules, 1986, hereinafter, ‘Rules’.
[30] *Vanashakti-I* (supra), ¶¶ 21 and 30.
[31] *Vanashakti-I* (supra), ¶ 27: “even after the payment of penalty, if the project is under construction, the same has to be stopped and demolished and even if operation has already commenced, the same has to be stopped and demolished.”
[32] *Vanashakti-I* (supra), ¶¶ 35 and 36.

First, the lead opinion found that *Vanashakti-I* had not correctly followed *Common Cause* (supra), *Alembic* (supra) and *Electrosteel* (supra). *Vanashakti-I* had relied upon the paragraphs of those decisions declaring an ex post facto EC alien to environmental jurisprudence, but the paragraphs in which the relief was moulded were not brought to its notice. In *Common Cause* (supra), mining operations carried on without EC were suspended, yet the leaseholders were permitted to apply for clearance and to resume upon its grant and full payment of compensation, so that the decision was no precedent against the grant of an ex post facto EC. In *Alembic*, the clearances granted after the projects were complete were left undisturbed, the directions of the NGT for their revocation and for closure of the units were set aside on proportionality, and costs were imposed instead. *Electrosteel* (supra) went further. *Vanashakti-I* noticed paragraph 72 of that decision, which holds the requirement of an EC to be non-negotiable, but paragraphs 73 to 87 were not brought before it. It was there that this Court first held in terms that the 1986 Act does not prohibit an ex post facto EC, a holding later followed in *Pahwa* (supra) and *D. Swamy* (supra), and on that basis declined to close a running plant which had shifted its site without prior clearance, permitting it instead to regularise its operations by obtaining the requisite clearances. The omitted paragraphs 73 to 87, in view of the lead opinion, *"would* *have had a direct bearing”* on the judgment and *“could have persuaded it to take a different view”*.[33]

14. Secondly, *Vanashakti-I* was held per incuriam. The coordinate Bench decisions in *Pahwa* (supra) and *D. Swamy* (supra), in which the two instruments had been upheld, were not brought to its notice, and the law laid down by it was found to be in conflict with them. Relying upon the authorities on judicial discipline,[34] the lead opinion reiterated that a Bench of two Judges is bound by the earlier judgment of another Bench of two Judges, and that if it is not in agreement with that judgment, the only option available to it is to refer the matter to a larger Bench. The same discipline governed the finding in paragraphs 74 and 75 of *Electrosteel*. If the Bench in *Vanashakti-I* considered that finding did not lay down the correct position of law *“the only option available to the Court was to refer the matter to a larger Bench”*.[35]

15. Thirdly, it found the reading of Section 15 in *Vanashakti-I* to be erroneous, for the provision *“deals with the aspect of penalty alone. Neither does it permit nor prohibit the regularization of the underlying*

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[33] The Review, ¶¶ 88 to 94 and ¶ 121. *Vanashakti-I* had relied upon ¶ 125 of *Common Cause*, ¶¶ 12, 21 and 23 of *Alembic* and ¶ 72 of *Electrosteel*. The paragraphs not brought to its notice were ¶ 10, ¶ 188(5) and ¶ 227 of *Common Cause*, ¶¶ 24 to 43 of *Alembic* and ¶¶ 73 to 87 of *Electrosteel*. The expressions quoted are from ¶¶ 121 and 101 respectively.

[34] *Official Liquidator v. Dayanand*, (2008) 10 SCC 1, *Dr. Shah Faesal v. Union of India*, (2020) 4 SCC 1 (Constitution Bench), and *Bajaj Allianz General Insurance Co. Ltd. v. Rambha Devi*, (2025) 3 SCC 95.

[35] The Review, ¶¶ 94 and 122. The holding of per incuriam is at ¶ 96.

project".[36] It was observed that Section 15 is a penal provision which fixes the punishment for the contravention. It does not dictate the regulatory consequence of the breach, that is, whether the offending project is to be demolished, closed, restricted to a permitted level or allowed to continue pending a fresh appraisal. That consequence is to be gathered from the scheme of the Act, the notifications and the general principles of environmental and administrative law, and not read into a penalty provision.

16. Fourthly, it weighed the consequences of the judgment under review. Public projects worth nearly twenty thousand crore rupees faced demolition. Twenty-four Central projects of about Rs. 8,293 crore and twenty-nine State projects of about Rs. 11,168 crore were pending, among them a 962-bed AIIMS hospital in Odisha, a greenfield airport at Vijayanagar in Karnataka and common effluent treatment plants. These projects were otherwise permissible in law and awaited only the formal grant of clearance, stalled by the interim stay ordered by this Court on 02.01.2024. Their demolition followed by reconstruction upon a fresh EC would create more pollution than it prevented.

17. The lead opinion drew reinforcement from two recent decisions of this Court. In *Municipal Corporation of Greater Mumbai v. Pankaj*

[36] The Review, ¶ 100.

Babulal Kotecha,[37] the century-old Khajuria Lake in Mumbai had been filled and converted into a recreational park at public expense. This Court declined to order its restoration. It opined that undoing the park would require felling of the mature trees which had grown upon it and squander the public funds spent on it. Thus, restoration would be more harmful for the environment than the original conversion, becoming *"a classic case of counterproductive remedial intervention"*.[38] In *Bindu Kapurea v. Subhashish Panda*,[39] officials of the Delhi Development Authority had felled trees for hospital approach roads in the teeth of an order of this Court. Even so, demolition was refused and compensatory afforestation over 185 acres was directed instead, for the works were complete. Court noted that *"the die is cast, and what is done cannot now be undone"*.[40] From these decisions the lead opinion drew a singular idea. Where the offending work stands complete, remediation is not an end in itself. A remedy that inflicts greater harm upon the environment and the public than the wrong it seeks to undo is itself counterproductive. In such cases, the corrective measure lies in

[37] *Municipal Corporation of Greater Mumbai v. Pankaj Babulal Kotecha*, 2025 SCC OnLine SC 1263. Khajuria Lake in Kandivali (West), Mumbai, a water body over a century old, had been filled and converted into a recreational park at public expense. This Court declined to direct its restoration, holding at ¶ 17 that demolition would cause greater ecological harm than the original transformation.
[38] *Kotecha* (supra), ¶ 17, as extracted in the Review, ¶ 132.
[39] *Bindu Kapurea v. Subhashish Panda*, 2025 INSC 784. Officials of the Delhi Development Authority had felled trees for approach roads to a public hospital in contravention of this Court's order dated 09.05.1996. This Court declined demolition and directed compensatory afforestation over 185 acres, holding at ¶ 26 that the works were complete and irreversible.
[40] *Bindu Kapurea* (supra), ¶ 26, as extracted in the Review, ¶ 137.

safeguards and recompense, not in restoration of *status quo ante*. It was therefore concluded that the present case called for a balanced approach in line with *Lafarge Umiam Mining (P) Ltd. v. Union of India*,[41] *Alembic* (supra) and *Electrosteel* (supra). In each of those cases the offending establishment was spared closure and permitted to continue its operations upon terms imposed by this Court. *Lafarge* (supra) had permitted the mining to continue upon deposits and strict safeguards. *Alembic* (supra) had exacted compensation of Rs. 10 crore from each erring unit. *Electrosteel* (supra) had left the plant running while its application for a revised clearance was decided. For the aforesaid reasons, the lead opinion concluded that *Vanashakti-I* must be recalled.[42]

18. Chandran J. concurred upon a narrower ground. In His Lordship's view, *Electrosteel*, *Pahwa* and *D. Swamy* (supra) could not per se be held to take a divergent view from *Common Cause* and *Alembic* (supra). The later decisions adverted to the earlier ones and while reaffirming the principle, undertook the same balanced approach. *Vanashakti-I* failed to notice the balancing approach in *Common Cause*, *Alembic* and *Electrosteel* (supra) as well as the power conferred by the 1986 Act, and its attention was not drawn to

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[41] *Lafarge Umiam Mining (P) Ltd. v. Union of India*, (2011) 7 SCC 338 (three-Judge Bench, decided 06.07.2011), considered in Section V below.
[42] The Review, ¶¶ 105 to 127. The projects and figures appear at ¶¶ 105 and 108 to 111, and the conclusion at ¶ 127.

Pahwa and *D. Swamy* (supra).[43] Crucially, His Lordship confined his concurrence to the question whether review was warranted. He forbore from pronouncing upon the validity of the 2017 Notification or the 2021 OM, leaving those questions open for the Bench rehearing the matters.

19. Bhuyan J., in his dissent, opined that no case for review had been made out.[44] The relief moulded in the cited cases was granted in their peculiar facts under Article 142 of the Constitution. It could not unsettle the principle those cases declared, for directions under Article 142 are not the ratio of any judgment. In His Lordship's view, it was the trilogy of *Electrosteel*, *Pahwa* and *D. Swamy* (supra) that was per incuriam the binding declaration in *Common Cause* and *Alembic* (supra). The precautionary principle lies at the core of environmental law and cannot be given short shrift by recourse to the reparative polluter pays principle. The principle of non-regression forbids the rolling back of existing levels of environmental protection. The declaration of validity in *D. Swamy* (supra), His Lordship noted, had been made without any challenge to the instruments or adjudication upon them. And the 2021 OM, issued more than three years after the window under the 2017

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[43] The Review, per Chandran J., ¶¶ 7 and 8. The possibility of reconciliation appears in ¶ 7(IV) and the reservation upon the validity of the two instruments in the opening of ¶ 7.
[44] The Review, per Bhuyan J., ¶¶ 1, 3 and 51.

Notification had closed, was superfluous and could at best be read as a procedure for the applications made within that window.[45]

20. It remains to fix the compass of the present rehearing. Those opposing the petitions urged that the observations in the lead opinion upon the validity of the two instruments conclude the matter. Those supporting them urged that this Bench is not bound by those observations as a fresh hearing before a coordinate Bench would become an empty formality.

21. In our view, the review was allowed upon two grounds alone, that *Vanashakti-I* failed to notice the paragraphs in which *Common Cause*, *Alembic* and *Electrosteel* (supra) moulded the relief, and that it did not consider the coordinate Bench decisions in *Pahwa* and *D. Swamy* (supra). The recall did not, and could not, rest upon a conclusive pronouncement on the merits. Where a Bench speaks through more than one opinion, the binding ratio lies in the points on which the Judges concurring in the result agree.[46] Chandran J. concurred upon those two grounds alone and expressly left the merits open. The ratio of the Review order therefore travels no further than the two grounds of recall. The observations of the lead

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[45] The Review, per Bhuyan J., ¶¶ 27, 36, 41 to 50 and 57.

[46] *Property Owners Association v. State of Maharashtra*, (2024) 18 SCC 1 : 2024 INSC 835, ¶¶ 142 and 143 (nine-Judge Bench): where a Bench speaks through more than one opinion, the ratio is culled from the greatest common measure of agreement amongst the Judges concurring in the result.

opinion upon the nature, scope and validity of the two instruments go beyond those grounds and do not bind this Bench. The Review order merely recalled *Vanashakti-I* and provided a clean slate for a fresh and independent consideration of the matters in issue. The validity of the 2017 Notification and the 2021 OM thus falls to be determined afresh in accordance with law.

QUESTIONS FOR DETERMINATION

22. The dialectical discourse gives rise to the following points for consideration.

i. Whether the 1986 Act read with the 2006 Notification mandates a prior environmental clearance, and if so, what consequence follows upon its breach?

ii. Do *Common Cause* and *Alembic* conflict with *Electrosteel*, *Pahwa* and *D. Swamy*, or can the two lines of authority be reconciled?

iii. Is 2017 Notification a valid statutory measure under the 1986 Act and the Rules?

iv. Whether the 2021 OM, issued upon NGT's direction in *Tanaji B. Gambhire*, is ultra vires the 1986 Act, the Rules and the 2006 Notification?

v. Whether prospective quashing of OMs dt. 07.07.2021 and 19.02.2021 in *Fatima* (supra) was justified?

vi. What will be the fate of the ECs already granted and pending applications under the 2017 Notification and the 2021 OM?

ANALYSIS

I. The Prior Environment Clearance Regime and its Development

23. The aforesaid questions are interlinked, for each turns upon the nature of the EC regime under the 1986 Act and the 2006 Notification. It would therefore be convenient to consider them together, beginning with the legal framework itself. India was a signatory to the Stockholm Declaration of June 1972, by which the world community resolved to protect and improve the human environment for present and future generations. The 1986 Act was enacted to give effect to that resolve. Section 3(1) confers upon the Central Government the power to take all such measures as it deems necessary or expedient for protecting and improving the quality of the environment and for preventing, controlling and abating environmental pollution. Section 3(2)(v) enables the Central Government to restrict the areas in which industries, operations or processes shall not be carried out, or shall be carried out subject to safeguards. Section 5 vests in the Central Government the power to issue binding directions to any person, officer or authority, including directions for the closure, prohibition or regulation of any industry, operation or process. Rule 5(3)(d) of the 1986 Rules prescribes the manner of exercise of the power under Section 3(2)(v), upon prior publication of a draft and the consideration of objections. Every measure taken under these provisions must answer to the object of the Act, namely the protection of the environment and the abatement of pollution.

24. Alongside the statute, the Courts wove the substantive principles of environmental law into the law of the land, as facets of the right to a clean and healthy environment under Article 21 of the Constitution. In *M.C. Mehta v. Union of India*,[47] in the backdrop of the Bhopal gas disaster, when oleum gas escaped from a Delhi plant, this Court propounded the rule of absolute liability for hazardous enterprises. In *State of Himachal Pradesh v. Ganesh Wood Products*,[48] it invoked the principle of inter-generational equity to strike down the indiscriminate licensing of katha units,

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[47] *M.C. Mehta v. Union of India*, (1987) 1 SCC 395, ¶ 31. Upon the escape of oleum gas from a unit of Shriram Foods and Fertiliser Industries in Delhi, a Constitution Bench held that an enterprise engaged in a hazardous or inherently dangerous industry owes an absolute and non-delegable duty to the community to ensure that no harm results from its activity.

[48] *State of Himachal Pradesh v. Ganesh Wood Products*, (1995) 6 SCC 363. The indiscriminate approval of new katha units based on khair wood was held contrary to the National Forest Policy and to inter-generational equity, for "the present generation has no right to deplete all the existing forests and leave nothing for the next and future generations".

holding that the present generation has no right to deplete all the existing forests and leave nothing for the next and future generations. In *Indian Council for Enviro-Legal Action v. Union of India*,[49] where untreated effluent from chemical plants had poisoned the soil and wells of a village in Rajasthan, it applied the polluter pays principle to charge the polluter with restoring the environment it had degraded. In *Vellore Citizens' Welfare Forum* (supra), prompted by the discharge of untreated effluent by tanneries in Tamil Nadu, it settled the precautionary and polluter pays principles as part of the law of the land, inhering in sustainable development. The public trust doctrine followed in *M.C. Mehta v. Kamal Nath*,[50] where the flow of the river Beas had been diverted to protect a private motel. It was held that State is a trustee of its rivers and forests and not their proprietor. The thread binding these decisions is constitutional as each drew its colour from Article 21, reinforced by what Article 48A asks of the State and Article

[49] *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212, ¶¶ 65 to 67. Chemical units at Bichhri in Udaipur district had discharged untreated toxic effluents and sludge, poisoning the soil and the ground water, and this Court held that the power to take all measures under Sections 3 and 5 includes the power to impose the cost of remedial measures upon the offending industry, applying the polluter pays principle.

[50] *M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388, ¶ 34. The flow of the river Beas had been diverted to protect a motel of Span Motels, and this Court held that the State, as a trustee of all natural resources meant for public use, had breached the public trust by leasing the riverbed to private management.

51A(g) of the citizen. The right to pollution free water and air was read into the right to life in *Subhash Kumar v. State of Bihar.*[51]

25. The 2006 Notification, preceded by the EIA Notification dated 27.01.1994,[52] gives expression to the precautionary principle at the only meaningful stage when precaution is possible before the harm occurs. In exercise of the powers conferred by Sections 3(1) and 3(2)(v) of the 1986 Act read with Rule 5(3)(d) of the Rules, the Ministry first issued the 1994 EIA Notification, which introduced the requirement of prior EC. It directed that the expansion or modernisation of any activity, or any new project listed in its Schedule, *"shall not be undertaken in any part of India unless it has been accorded environmental clearance"*.[53] The mandate was one of prior clearance although the word '*prior*' was not employed. The 2006 Notification, which superseded it, placed the matter beyond doubt. It employs the word '*prior*' at numerous places and forbids *"any construction work, or preparation of land by the project management except for securing the land"*, before clearance is accorded.[54] Under Para 7 of the 2006 Notification, environment clearance is the culmination of a four-stage process. Screening

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[51] *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598, ¶ 7. In a petition complaining of the discharge of slurry from washeries into the river Bokaro, this Court held that the right to life under Article 21 includes the right of enjoyment of pollution free water and air.
[52] Hereinafter "1994 Notification".
[53] EIA Notification dated 27.01.1994, S.O. 60(E). The direction is quoted in *Alembic* (supra), ¶ 21.
[54] Paragraph 2 of the 2006 Notification.

determines whether a project of Category 'B'[55] requires an impact assessment study at all. Scoping settles the terms of reference for that study. During public consultation persons likely to be affected by a project, which has not yet altered their environment, are heard. Appraisal then weighs the likely impacts, the objections raised and the mitigation proposed, before the project is permitted. Every stage is, by design, anterior to the activity, for each is directed to a judgment upon impacts that lie in the future and remain, at that stage, preventable.

26. Breach of the prior EC regime carries penal consequences under Section 15 of the 1986 Act. Before the Jan Vishwas (Amendment of Provisions) Act, 2023, the commencement of an activity without prior clearance was an offence punishable with imprisonment of up to five years, or with fine of up to Rs. 1 lakh, or with both.[56] With effect from 01.04.2024, the amendments replaced criminal

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[55] Under the 2006 Notification, Category 'A' projects require clearance from the Central Government and Category 'B' projects, being of lesser potential impact by the thresholds fixed in the Schedule, from the State Environment Impact Assessment Authority. Upon screening, Category 'B' projects are classified as 'B1', requiring an impact assessment study, or 'B2', requiring none.

[56] Prior to 01.04.2024 Section 15, Environment Protection Act, 1986 read as follows:
Section 15 Penalty for contravention of the provisions of the Act and the Rules, Orders and Directions: *(1) Whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued thereunder, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years or with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.*
(2) If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years."

prosecution with a regime of civil penalties for contraventions of the Act and the rules, orders and directions made under it,[57] a change which bears directly upon violations of the prior clearance requirement under the 2006 Notification. A proponent who commences construction or operation without prior EC is now liable under Section 15 of the 1986 Act, where no separate penalty is provided, to a penalty of Rs. 10,000 to Rs. 15 lakh, with an additional Rs. 10,000 for every day of continuing contravention. Where the violator is a company, Section 15A raises the minimum to Rs. 1 lakh, subject to the same ceiling and with an additional Rs. 1 lakh per day of continuing violation. Where the contravention is

[57] Section 15 of Environment Protection Act, 1986, as substituted by the Jan Vishwas (Amendment of Provisions) Act, 2023 reads as follows:
Section 15 Penalty for contravention of provisions of Act, rules, orders and directions.—
(1) Where any person contravenes or does not comply with any of the provisions of this Act or the rules made or orders or directions issued thereunder for which no penalty is provided, he shall be liable to penalty in respect of each such contravention which shall not be less than ten thousand rupees but which may extend to fifteen lakh rupees.
(2) Where any person continues contravention under sub-section (1), he shall be liable to additional penalty of ten thousand rupees for every day during which such contravention continues.
15A. Penalty for contravention by companies.—
(1) Where any company contravenes any of the provisions of this Act, the company shall be liable to penalty for each such contravention which shall not be less than one lakh rupees but which may extend to fifteen lakh rupees.
(2) Where any company continues contravention under sub-section (1), the company shall be liable to additional penalty of one lakh rupees for every day during which such contravention continues.
15B. Penalty for contravention by Government Department.—
(1) Where contravention of any of the provision of this Act has been committed by any Department of the Central Government or the State Government, the Head of the Department shall be liable to penalty equal to one month of his basic salary: Provided that he shall not be liable for such contravention, if he proves that the contravention was committed without his knowledge or instructions or that he exercised all due diligence to prevent such contravention.
(2) Where any contravention under sub-section (1) is attributable to any neglect on the part of, any officer, other than the Head of the Department, the officer shall be liable to penalty equal to one month of his basic salary: Provided that he shall not be liable for the contravention, if he proves that he exercised all due diligence to avoid such contravention.

by a Government Department, Section 15B renders the Head of the Department, or any officer whose neglect caused it, liable to a penalty of one month's basic salary, subject to a due diligence defence. Criminal consequences are reserved by Section 15F for default, which makes failure to pay a penalty within ninety days an offence punishable with imprisonment of up to three years, or with fine of up to twice the penalty, or with both. In the case of companies, persons in charge of the business and officers whose consent, connivance or neglect is established may also be proceeded against. Breach of the prior EC framework is thus now an enforceable statutory contravention attracting escalating civil penalties, with prosecution reserved for their non-payment.

27. However, neither the Act nor the notification states what is to become of the offending project itself, that is, whether it must be demolished and *status quo* restored, or if it may be allowed to continue, and upon what terms. Upon that silence, as will be seen, much of the present controversy turns.

28. The silence was compounded by lax implementation and rampant violations. Industrial, mining and construction activities were commenced, expanded or completed without prior clearance, and the Government answered the defaults with a succession of executive instruments which sought to cure the breach after the event. Under the 1994 regime, the deadline for obtaining clearance was repeatedly extended by circulars, the last in the series being the circular dated 14.05.2002, which permitted units already in production to cure their default by an ex post facto clearance.[58] The same course was attempted under the 2006 Notification through the Office Memoranda dated 16.11.2010, 12.12.2012 and 27.06.2013. Clearance which the notification mandated before the commencement of the activity was thus sought to be granted after the violation had occurred.

29. The OMs of 2012 and 2013 were then quashed by the National Green Tribunal in *S.P. Muthuraman v. Union of India*,[59] in proceedings concerning construction projects which had commenced, and in some cases substantially proceeded without prior clearance. The Tribunal held that the 2006 Notification proceeds upon an anterior assessment of environmental impact. The OMs, though styled as guidelines, directly varied the substantive law in force and were *"potently destructive of the Notification of 2006"*.[60] They vested in the authorities an unguided discretion, both in the processing of applications and in the

[58] That circular was struck down by the National Green Tribunal (Western Zone) by judgment dated 08.01.2016 in *Rohit Prajapati v. Union of India*. It was the appeal against that judgment which culminated in *Alembic* (supra).
[59] *S.P. Muthuraman v. Union of India*, 2015 SCC OnLine NGT 169 (judgment dated 07.07.2015).
[60] *Muthuraman* (supra), ¶ 78.

condonation of violations already committed. The Tribunal deprecated the recurring character of the indulgence in the following words: *"Repetitive condonation of violation of law would only aim at encouraging violators to flout the law repeatedly ... The doctrine of necessity does not operate on the axis of illegality and violations."*[61] The two OMs were declared ultra vires the 1986 Act read with the 2006 Notification and were quashed.[62]

30. In *S.P. Muthuraman* (supra), NGT established that an executive instruction could not bend the notification. What followed was an amending instrument of the same rank. The 2017 Notification, S.O. 804(E) dated 14.03.2017, was issued in exercise of the powers under Sections 3(1) and 3(2)(v) of the 1986 Act read with Rule 5(3)(d) of the Rules, upon prior publication of a draft on 10.05.2016 and the consideration of objections. Its recitals record the receipt of proposals for projects which had started work, expanded production or changed the product mix without prior clearance. It refers to the decisions of the High Court of Jharkhand and the Tribunal and states the object of the measure, to bring the non-compliant within the discipline of the environmental laws *"rather than leaving them unregulated and unchecked, which will be more*

[61] *Muthuraman* (supra), ¶ 81.
[62] *Muthuraman* supra), ¶ 163.

damaging to the environment".[63] The process was to deter violation and to compensate adequately the pecuniary benefit of the violation and the damage to the environment. In substance, the notification offered an amnesty, closed at both ends. Only projects in violation as on its date were eligible, and they could apply within six months alone. The Madras High Court in *Puducherry* (supra) disposed of the challenge to the notification upon the statement of the learned Additional Solicitor General, made on instructions and treated as an undertaking of the Central Government, that the notification *"shall clearly and certainly be only a one-time measure".*[64] The window was later extended by thirty days, until 13.04.2018, upon the orders of the High Court in *Appaswamy Real Estates Ltd.* (supra).

31. Four years later, in *Tanaji B. Gambhire* (supra), the National Green Tribunal considered a challenge to the grant of an ex post facto EC by SEIAA, Maharashtra to a completed construction project. It was contended that even though the proponent had changed the scope of the project to include residential buildings, flats and shops, post facto EC was granted without requiring demolition or payment of assessed compensation. By order dated 24.05.2021, the Tribunal directed the Ministry to lay down a proper standard operating

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[63] Recitals 9 to 11 of the 2017 Notification. The words quoted are from Recital 11.
[64] *Puducherry* (supra), ¶ 4(i).

procedure for the grant of EC in such cases of violation, so as to address the gap between the binding law and the practice being followed.[65] In purported compliance, the Ministry issued the 2021 OM on 07.07.2021, an administrative order by a Joint Secretary styled as 'Standard Operating Procedure (SOP) for Identification and handling of violation cases under EIA Notification 2006'.

32. The 2021 OM along with OM dated 19.02.2021 came to be challenged before the Madras High Court in *Fatima* (supra). By judgment dated 30.08.2024, the Division Bench held that although the 1986 Act does not explicitly prohibit ex post facto EC, it contains no enabling provision for it either.[66] The 2006 Notification mandates a prior clearance, and where the legal requirement is '*prior*' it cannot ordinarily be satisfied post facto, consistent with the principle in *Life Insurance Corporation of India v. Escorts Ltd.*[67] The Court noted that such clearances have been consistently deprecated and can be countenanced only in exceptional circumstances. It held that the 2021 OM made the exception a routine, across-the-board affair. The vice was aggravated by the fact that this was not a one-time corrective measure, but part of a

[65] The direction is recorded in the recitals of the 2021 OM and is quoted in *D. Swamy* (supra), ¶ 30.
[66] *Fatima* (supra), ¶ 26(i). The powers under Sections 3 and 5 of the 1986 Act, it was held, can be used only for protecting the environment and abating environmental pollution and cannot be used for nullifying the 2006 Notification which makes prior EC imperative.
[67] *Life Insurance Corporation of India v. Escorts Ltd.*, (1986) 1 SCC 264 (Constitution Bench).

series of executive instruments by which the exception had hardened into a *"new normal"*.[68] Since powers under Sections 3 and 5 of the Act may be exercised only to protect the environment and abate pollution, they could not be invoked through executive instructions to neutralise the prior EC mandate under the 2006 Notification. The Court did not rest its conclusion on any breach of the undertaking in the *Puducherry* matter, recognising that *Pahwa* and *D. Swamy* (supra) had held that a statement of counsel cannot denude the authority of its power to amend. It accordingly quashed the 2021 OM and OM dated 19.02.2021, but made the judgment prospective, protecting applications already filed.[69] The Division Bench thus drew the critical distinction between an exceptional corrective measure and a standing regime.

II. <u>Consequence of Breach and the Scope for Regularisation</u>

33. The mandatory character of the prior EC requirement, and the consequence that follows upon its breach, must be ascertained from the scheme of the statute itself. The question which arises is when a statute requires a thing to be done in a particular manner

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[68] *Fatima* (supra), ¶ 26(v). The impugned OMs, by making ex post facto EC "a routine across the board affair", converted what should be an exception into "a rule/norm" through "a barrage/slew of instructions which have been issued one after the other in succession making it a 'new normal'".
[69] *Fatima* (supra), ¶¶ 26(xxi)(c), 28 and 29(i). Applications for ex post facto EC already made were permitted to be carried to their logical end untrammelled by the judgment, prospective overruling being invoked only as a "buttressing factor".

and prescribes the consequence of non-compliance as prosecution or civil penalty, does such scheme admit to retention of deviant state of affairs or restoration of *status quo ante* is the only option. The inquiry turns upon twin considerations. One, whether the prescription of law is mandatory and if so, are the express consequences of its breach exhaustive yielding to no further incidental consequences like restoration, *status quo ante* and the like. Answer to these issues lies upon the subject matter in which the regulatory prescription operates, its importance and nexus to the object of the Act and whether the express consequences wholly address the damage caused by the breach.

34. An analysis of the Act and the 2006 Notification shows that the prior EC requirement is mandatory. The 2006 Notification articulates the vital precautionary principle and aligns itself with the object of the Act by ensuring a graded response to sustainable development prior to commencement of such activity impacting environment. Text of the notification and its core philosophy which may be loosely termed as 'look before you leap' and the prescribed consequences namely prosecution (now, civil penalty) unequivocally point in one direction namely its mandatory import.

35. Having held the prior EC regime under the 2006 Notification as mandatory, the next and more intriguing question is to determine the scope and ambit of the consequences of its breach. The unamended law prescribed a stricter consequence of prosecution and imprisonment which since 2024 has been altered to civil penalty. We are unable to accept that such decriminalisation by itself would alter the mandatory character of prior EC regime in the 2006 Notification which remains founded on precautionary principle, is couched in imperative terms and prescribes civil penalty for its breach.

36. Respondents argue the law having prescribed the consequences of the breach, the same needs to be treated as exhaustive and no additional consequence in the form of demolition, dismantling and restoration of *status quo ante* can be read into the law. Contrarily, petitioners point out that every act done in breach of a mandatory prior EC is void ab initio, that the wrongdoer can never enjoy the fruits of his own wrong and that nothing short of demolition and restoration of the *status quo ante* will suffice. Whether the unauthorised act is void, or merely unlawful and capable of regularisation, is a question of construction. In *Asha John Divianathan v. Vikram Malhotra*[70], this Court dealt with Section 31

[70] *Asha John Divianathan v. Vikram Malhotra*, 2021 SCC OnLine SC 147, ¶ 32 (three-Judge Bench holding a gift of immovable property by a foreign national without the previous permission of the Reserve Bank under Section 31 of the Foreign Exchange Regulation Act, 1973 to be void: "the requirement of taking 'previous' permission of RBI before executing the sale deed or gift deed is the quintessence; and failure to do so must render the transfer unenforceable in law"). Contrast *Life Insurance Corporation of India v. Escorts Ltd.*, (1986) 1

of the Foreign Exchange Regulation Act, 1973, which required 'previous' permission of the Reserve Bank before a transfer of immovable property. Relying on the express word "previous permission", this Court held such requirement as mandatory and the offending act, namely, the sale deed transferring property as void ab initio. The prior EC scheme under the 2006 Notification carries similar import. The words "prior EC" and the precautionary principle that it encapsulates coupled with its proximate and live link to the object of the 1986 Act make prior EC a non-negotiable pre-requisite. Consequences of its breach, namely prosecution or presently civil penalty is of punitive character reinforcing the mandatory import but the Act and the Notification are silent with regard to the usufruct of the wrongful act for which penal consequences are so prescribed. We are unable to subscribe to the view that such silence would permit a wrongdoer to continue enjoying the usufructs of his wrongdoing. Prosecution/penalty punishes the wrongdoer for the breach. Its imposition cannot be a justification to condone a void act committed in violation of a mandatory provision of law. Such an interpretation would in effect make the prior EC regime directory by purging a void act on the touchstone of prosecution or civil penalty, as the case may be.

SCC 264, ¶ 63 (Constitution Bench reading Section 29 of the same Act, which omits the word "previous", as admitting of an ex post facto permission).

Given this situation, we are inclined to hold that the 1986 Act read with 2006 Notification prescribing prior EC is mandatory and its breach apart from attracting prosecution/penalty would by necessary implication lead to restoration of *status quo ante* extending to closure, demolition, remediation of environmental damage and recovery of costs.

37. This brings us to another pivotal question germane to the matter in issue. Does the scope and ambit of Section 3, a delegating provision, permit the Central Government to carve an exception to the mandatory prior EC regime?

38. Section 3 empowers the Central Government to protect and improve the quality of the environment and to prevent, control and abate environmental pollution. The words "*control*" and "*abate*" are of the widest import. As this Court has long held, the term '*control*' is of a very wide connotation and amplitude and includes a large variety of powers which are incidental or consequential to achieve the powers vested in the authority concerned.[71] In the present

[71] See *Corpn. of City of Nagpur v. Ramchandra*, (1981) 2 SCC 714, ¶ 4 (holding the power of supervision and control over municipal servants to include the incidental power of suspension pending inquiry, the Court affirming that "the term 'control' is of a very wide connotation and amplitude and includes a large variety of powers which are incidental or consequential to achieve the powers vested in the authority concerned"). See also *Chief Justice of A.P. v. L.V.A. Dixitulu*, (1979) 2 SCC 34, ¶ 40 (holding the control vested in the High Court over the subordinate judiciary under Article 235 to be "exclusive in nature, comprehensive in extent and effective in operation", comprehending a wide variety of incidental and consequential powers).

context such a power includes not only prevention of pollution but also repair of the mischief already caused, as held in *Indian Council for Enviro-Legal Action (supra).* There, chemical units at Bichhri in Udaipur manufacturing '*H*' acid, an intermediate used in the making of dyes, had discharged untreated toxic effluent and dumped sludge in the open, poisoning the soil, aquifers and well water of the village. The question was whether the cost of restoring the environment could be visited upon the offending industry in proceedings under Article 32. This Court held that even if it could not itself award damages against a private concern, it could direct the Central Government to determine and recover that cost. Sections 3 and 5, read with the wide definition of '*environment*' in Section 2(a) of 1986 Act, clothe the Central Government with all such powers as are necessary or expedient for protecting and improving the quality of the environment, including the power to direct removal of the offending condition, to undertake remedial measures and to recover the costs from the offending industry.

39. If '*control*' envisages whatever is incidental or consequential to the end it serves, the power to control pollution under Section 3 is not exhausted in the prohibitory rule of prior clearance. It also enables the Central Government to deal with the consequences of breach, provided the response is directed towards environmental protection, damage assessment, remediation, restitution and deterrence. A violation-management mechanism, in that limited sense, may bring errant units back within the regulatory fold, not by excusing the breach but by subjecting them to appraisal, penalty, environmental compensation, remediation and future compliance.

40. The aforesaid point is reinforced by the subsequent amendment of Section 15 of the 1986 Act by the Jan Vishwas Act, 2023. By substituting prosecution with a civil penalty, Parliament relaxed the rigours of the consequence but did not amend or repeal the requirement that EC must be obtained before the activity commences. So long as the 2006 Notification continues to use the expression *"prior"*, its compliance remains mandatory. The architecture of the 2006 Notification remains intact and its mandatory character unsullied. What the amended statutory scheme supplies is a relaxed legislative space. The altered scheme reinforces the view that Section 3 vests the delegatee Government with the power to amend the prior notification, so that, in appropriate cases, a breach need not invariably result in dismantling, demolition or closure, but may instead be addressed through penalty, remediation, restitution and future compliance.

III. Ex post facto clearance in the decisions of this Court

41. At this stage, it may be apt to recount the manner in which this Court has dealt with regularisation issues arising from breach of the 1994 and 2006 Notifications. The earliest relevant decision is *Lafarge* (supra), where a mining project that had proceeded on a clearance later found to be defective was permitted to continue upon a fresh environmental clearance and an ex post facto forest clearance. A three-Judge Bench upheld the grant of both the EC and the FC. In doing so it announced the standard by which such a decision is to be judged. *"The time has come for us to apply the constitutional 'doctrine of proportionality' to the matters concerning environment as a part of the process of judicial review ... the Court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint. Once this is ensured, then the doctrine of 'margin of appreciation' in favour of the decision-maker would come into play."*[72] Tested on that standard it was held that there had been no suppression of material facts by the proponent and that MoEF had taken requisite care and caution to protect the environment.[73] The mining was permitted to continue upon deposits of Rs. 55 crore and strict remedial safeguards.

[72] *Lafarge* (supra), ¶ 119.
[73] *Lafarge* (supra), ¶ 114.

42. *Electrotherm (India) Ltd. v. Patel Vipulkumar Ramjibhai*[74] proceeded on a similar footing. A clearance for the expansion of a steel plant, granted without a fresh public hearing, was held invalid and improper. Yet the Court declined to close the plant, which had been built in the meanwhile. It converted the requirement of public consultation from pre-decisional to post-decisional instead. *Lafarge* (supra) and *Electrotherm* (supra) thus share a common signature, a preference for continuance over cessation where special equities exist. The equity lay in a valid initial clearance in the one, and in substantial compliance in the other. Neither lays down that continuance follows upon the mere payment of compensation. And *Electrotherm* (supra) must be read in its own setting. Where a project stands built and operational, a subsequent hearing is ordinarily reduced to a formality. The affected population cannot reverse an environmental change that has already occurred.

43. Both were cases in which a clearance existed but was found procedurally deficient, not cases in which the activity had commenced without any clearance whatever. *Common Cause* (supra) dealt with a graver case of mineral extraction without or in excess of clearance, devastating the forests and the tribal habitations of the region. The Ministry, the Court observed, had

[74] *Electrotherm (India) Ltd. v. Patel Vipulkumar Ramjibhai*, (2016) 9 SCC 300, ¶ 19.

over the years been cajoling the leaseholders into compliance rather than using the stick. Its soft approach, however, could not become an escapist excuse for non-compliance with the law.[75] The leaseholders argued that a clearance, once granted, should relate back to the date of the application, and that the very availability of an ex post facto clearance signalled that a prior EC was not mandatory. The argument was rejected in terms that have since become the locus classicus of the subject. A prior EC is necessary. The grant of an ex post facto clearance would be detrimental to the environment and could lead to its irreparable degradation. The concept of a retrospective clearance is alien to environmental jurisprudence, under EIA 1994 and EIA 2006 alike, and an EC comes into force not earlier than the date of its grant.[76] Yet the declaration must be read alongside the relief the Court actually moulded. The mining leases operating without clearance were suspended and they were allowed to apply for the requisite clearances and to move the Court upon obtaining them. Compensation at one hundred per cent of the price of the mineral illegally extracted was directed to be recovered, and the leaseholders were permitted to restart their operations upon

[75] *Common Cause* (supra), ¶ 108: "the MoEF was, in a sense, cajoling the mining leaseholders to comply with the law and EIA 1994 rather than use the stick … That the MoEF took a soft approach cannot be an escapist excuse for non-compliance with the law or EIA 1994."
[76] *Common Cause* (supra), ¶ 125.

compliance and full payment.[77] It is trite that the ratio of a case cannot be read as a statute and must be understood in its factual matrix.[78] The word '*jurisprudence*' in the declaration takes in the scheme of the law as it then stood, the Act, the Rules and the two notifications. That scheme contained no amending provision accommodating an ex post facto clearance. The declaration therefore must be read with reference to the regime as it then stood, unamended, and under which nothing short of the *status quo ante* would answer.

44. *Alembic* (supra) is, in this respect, kindred with *Common Cause*. The circular dated 14.05.2002, which permitted units operating without clearance under the 1994 regime to obtain clearance after the event, was held to be an administrative instruction not traceable to Section 3 of the 1986 Act. It diluted the statutory mandate of prior clearance and could not amend delegated legislation. That principle applies equally to the 2006 Notification. The Court, however, again moulded relief. While striking down the circular, it declined to revoke clearances or close units which had operated for years and had since obtained clearances, and instead

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[77] *Common Cause* (supra), ¶ 10, ¶ 188(5) and ¶ 227.

[78] *Haryana Financial Corpn. v. Jagdamba Oil Mills*, (2002) 3 SCC 496: observations in judgments are neither to be read as Euclid's theorems nor as provisions of a statute, and must be understood in the context of the facts in which they were made.

imposed compensation of Rs. 10 crore on each unit in exercise of Article 142.

45. *Electrosteel* (supra) addressed the fate of a running steel plant which had shifted from the site for which clearance had been granted. The Court affirmed that compliance with EC requirements is non-negotiable, but held that the 1986 Act does not itself prohibit ex post facto environmental clearance. Such approval, however, was confined to exceptional cases, to be granted only in accordance with law and in strict conformity with applicable rules, regulations and notifications. In the facts of the case, this Court declined to permit closure of the steel plant for want of a prior EC and directed its application for post facto EC to be decided in accordance with law, having weighed the consequences of closure, namely the loss of employment for the workmen of the erring plant and the contribution of such an establishment to the national economy. The deviant industry remained liable to heavy penalty and restoration costs under the polluter pays principle.

46. The two impugned instruments themselves first came to be considered by this Court in *Pahwa* and *D. Swamy* (supra), though neither of them was under challenge in those proceedings. In *Pahwa* (supra), units manufacturing formaldehyde and employing about eight thousand workers had been set up upon consents granted by the Haryana State Pollution Control Board. The Board itself believed that no EC was required for such units. By the time the matter reached this Court, the Expert Appraisal Committee had scrutinised their applications for clearance, found them eligible and recommended the grant of terms of reference. Setting aside the closure ordered by the Tribunal, this Court declared the 2017 Notification to be a valid statutory notification, issued in the same manner as the notifications of 1994 and 2006.[79] The power of amendment rests upon Section 21 of the General Clauses Act, 1897, and may be exercised from time to time having regard to the exigency. The instrument struck down in *Alembic* (supra) was an administrative circular. The instrument before the Court was delegated legislation of the same rank as the notification it amended, and *Alembic* (supra) was distinguished on that very ground. The undertaking recorded in *Puducherry* (supra) was held to be no fetter. Words in a judgment cannot be read in the manner of a statute, and a statement of counsel cannot prevent the authority from amending a notification as per the procedure prescribed by law.[80] The 2021 OM was held to have been issued *"in*

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[79] *Pahwa* (supra), ¶¶ 31-32, reiterated in [79]*D. Swamy*[79] (supra), ¶ 22: "The Notification of 2017 is a valid statutory notification issued by the Central Government in exercise of power under Sections 3(1) and 3(2)(v) of the EP Act read with Rule 5(3)(d) of the EP Rules in the same manner as the EIA Notification dated 27-1-1994 and the Notification dated 14-9-2006." On the power of amendment, see [79]*D. Swamy*[79] (supra), ¶ 23, following *Shree Sidhbali Steels Ltd. v. State of U.P.*, (2011) 3 SCC 193.

[80] *D. Swamy* (supra), ¶¶ 35-36, and *Pahwa* (supra), ¶ 47. *Alembic* was distinguished in *Pahwa* (supra), ¶ 61.

pursuance of the statutory notification of 2017 which was valid", and upon that view the interim stay of the OM by the Madras High Court was held to be in error.[81] *D. Swamy* (supra) reiterated these propositions in relation to a common bio-medical waste treatment facility, which had begun operating before clearance was stipulated for such facilities at all. Its closure, the Court held, would itself be against the public interest, for the operation of such a facility prevents pollution.[82]

47. There is, however, one step in that reasoning from which we must respectfully depart. The 2021 OM does not trace its source to the 2017 Notification. Its own recitals invoke the direction of the Tribunal in *Tanaji B. Gambhire* (supra). It is a bare administrative instruction complete in itself, and not an extension of the 2017 Notification. The window under that notification had in any event closed on 13.04.2018, more than three years before the OM was issued. To the extent that *Pahwa* and *D. Swamy* (supra) read the 2021 OM as issued in pursuance of the 2017 Notification, and proceeded upon its validity on that footing, they do not, with respect, lay down the correct law.

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[81] *Pahwa* (supra), ¶ 48, reiterated in *D. Swamy* (supra), ¶ 37. The 2021 OM is considered in *Pahwa* (supra), ¶¶ 40-41, and in *D. Swamy* (supra), ¶¶ 30 to 32. The interim order dated 15.07.2021 of the Madras High Court staying the 2021 OM, reported as 2021 SCC OnLine Mad 12936, was held to be in error in *Pahwa* (supra), ¶ 48.

[82] *D. Swamy* (supra), ¶ 50. Clearance was stipulated for common bio-medical waste treatment facilities by the insertion of Entry 7(da) into the Schedule to the 2006 Notification with effect from 17.04.2015.

48. Save to the limited extent indicated above, these decisions do not collide. *Common Cause* and *Alembic* (supra) declare the norm that a prior EC is mandatory. Yet each of those decisions itself moulded the consequence of breach, withholding demolition and closure upon terms of compensation and compliance. *Lafarge*, *Electrotherm*, *Electrosteel*, *Pahwa* and *D. Swamy* (supra) operate at that stage of consequence, and none of them holds that a prior EC is not the rule. *Electrosteel* (supra) affirmed the rule in terms. It then answered a question the earlier cases had no occasion to face, the fate of a standing establishment, and resolved it upon a weighing of consequences. *Pahwa* and *D. Swamy* (supra) answered a question *Alembic* (supra) never faced, whether the Central Government may amend its own notification, and considered the impugned instruments for the first time. The declaration in *Common Cause* (supra) and *Alembic* (supra), thus governs the regime as it stood, unamended. The validity of any amendment is governed, *inter alia*, by the tests of reasonable classification and proportionality. The aforesaid decisions must be read in their unique factual matrix subject to the following clarifications. The observation in *Electrosteel* (supra) that the 1986 Act does not prohibit an ex post facto clearance is incorrect as it fails to take into consideration the mandatory character of the unamended

2006 Notification. Similarly, *Pahwa* and *D. Swamy* (supra) are not good law to the extent said authorities uphold the validity of the 2021 OM on a mistaken premise that it was issued in pursuance of the 2017 Notification.

49. In light of the above discussion, we proceed to examine the validity of the two impugned instruments.

IV. <u>The 2017 Notification</u>

50. The first impugned instrument is the 2017 Notification, issued by the MoEFCC on 14.03.2017. It is delegated legislation, made in exercise of the powers vested in the Central Government under Sections 3(1) and 3(2)(v) of the 1986 Act read with Rule 5(3)(d) of the Rules. Its making followed the procedure prescribed for such legislation. A draft was published in the Official Gazette, objections were invited under Rule 5(3) and duly considered, and the notification once made was laid before both Houses of Parliament. A dialogue with stakeholders thus preceded its issuance and parliamentary oversight followed it. Through the notification the Ministry created an appraisal process for projects operating without prior EC as on its date, in violation of the 2006 Notification.

51. The 2017 Notification therefore carved an exception into the prior EC regime of the 2006 Notification whose mandatory character has already been established. While dealing with prior EC under the 1994 and 2006 Notifications, this Court in *Common Cause* (supra) held that the *"concept of an ex post facto or a retrospective EC is completely alien to environmental jurisprudence including EIA 1994 and EIA 2006"*.[83] That declaration must, however, be read in the context of the scheme then before the Court. It is not a principle of universal application that puts a clog on the power of the delegatee authority to amend the notification itself. The notification was in fact upheld as a one-time measure by the Madras High Court in *Puducherry* (supra), upon an undertaking to that effect given by the learned Additional Solicitor General. In *Pahwa* (supra) and *D. Swamy* (supra) this Court held that the undertaking could not militate against the power of the Central Government under Section 21 of the General Clauses Act, 1897 to amend an earlier notification in the like manner,[84] a position the Madras High Court itself reiterated in *Fatima* (supra). The 2017 Notification thus stands on the same plane as the 2006 Notification, both being delegated legislation, and could alter or amend it, provided the alteration bore a legitimate nexus with the object of Section 3 of the 1986 Act,

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[83] *Common Cause* (supra), ¶ 125.

[84] "21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws.—Where, by any Central Act or Regulations a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."

namely *"protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution"*.

52. The exception so carved is in the nature of an amnesty. It draws projects in breach of the prior EC mandate back within the regulatory framework, upon adequate deterrence, rather than leaving them unchecked. Such a course is open because the parent Act, as seen earlier, is silent on restoration of the *status quo ante*, so that the precautionary principle stands as the rule and a bounded amnesty may stand as the exception. Since the prior clearance regime gives effect to the right to a wholesome environment under Article 21 and rests upon that principle, any such exception must satisfy two distinct constitutional inquiries. The first is the test of reasonable classification under Article 14, which asks whether the measure treats differently placed project proponents as though they were alike, or selects among them upon an intelligible differentia bearing a rational nexus with the object of the Act. The second is proportionality, which asks whether the inroad made into the prior clearance regime is justified by a proportionate reconciliation of the right to a clean environment vis-à-vis the right to development, more specifically in the environmental context, the right to sustainable development, both traceable as unenumerated rights under Article 21[85] as well as Article 19(1)(g).

53. A project proponent who has complied with the law by obtaining prior environmental clearance does not stand on the same footing as one who has commenced construction, expansion or operation in breach of that mandate. Nor do all violators form one homogeneous class. A violator whose project serves an overriding public interest, protects innocent third-party interests, maintains an essential public utility or itself advances an environmental object may be placed in a class different from a violator whose project serves only private commercial gain. The differentia must be drawn from the object of the 1986 Act. A class defined merely by the fact that the project is otherwise permissible, or by the proponent's willingness to pay compensation, bears no rational nexus with that object. It only places the errant proponent substantially on par with the law-abiding one.

[85] *N.D. Jayal v. Union of India*, (2004) 9 SCC 362, ¶ 25. In a challenge to the clearances for the Tehri dam project, it was held that "Right to environment is a fundamental right. On the other hand, right to development is also one. Here the right to 'sustainable development' cannot be singled out. Therefore, the concept of 'sustainable development' is to be treated as an integral part of 'life' under Article 21." See also *The Auroville Foundation v. Navroz Kersasp Mody*, 2025 INSC 347, ¶ 17, where, in appeals against NGT orders halting road development under the Auroville Master Plan, the right to development through industrialisation was held to claim priority under Articles 14, 19 and 21 alongside the right to clean environment under Articles 14 and 21, sustainable development striking a golden balance between the two rights, and *K.S. Puttaswamy v. Union of India*, (2019) 1 SCC 1, ¶ 298, per Sikri J., where, in the challenge to the Aadhaar Act, 2016, two competing rights traceable to Article 21 were weighed and it was held that neither may be given automatic precedence over the other.

54. Once the classification survives Article 14, the measure must still pass the test of proportionality. On one side lies the right to a clean and healthy environment, secured through the prior EC regime and the precautionary principle. On the other lies the right to sustainable development, not as a vested right of the wrongdoer to continue an unlawful project, but as a larger public interest which may, in a proper case, justify controlled continuance subject to assessment, remediation, deterrent compensation and future compliance. The right to development, therefore, enters the balance only at the level of public interest and cannot be reduced to the private commercial interest of the defaulting proponent.

55. Proportionality also governs how narrowly the exception must be bounded, a point illuminated by the treatment of amnesty schemes in other fields of law. Such schemes are rare exceptions which erase the consequences of a breach of law, and must subserve a larger public interest that justifies the inversion of the rule of law. In taxation, immunity schemes for undisclosed wealth have been upheld in deference to legislative wisdom in economic policy, as held in *R.K. Garg v. Union of India,*[86] but their legitimacy depends upon their being exceptional and finite. The Voluntary Disclosure of Income Scheme of 1997 was sustained in *All India Federation of*

[86] (1981) 4 SCC 675.

Tax Practitioners v. Union of India[87] only upon the Union's assurance, recorded by the Court, that it was a one-time measure that would not be repeated.

56. The same limits appear in town planning. The statutory regularisation of unauthorised construction has been upheld only as a one-time measure to cure a historically accumulated breakdown of enforcement, as in *Consumer Action Group v. State of Tamil Nadu*, (2000) 7 SCC 425, while *Friends Colony Development Committee v. State of Orissa*, (2004) 8 SCC 733 warned that compounding, intended as an exception, has unfortunately become the rule, and that deliberate violations by professional builders must be dealt with sternly. Most recently, *Rajendra Kumar Barjatya v. U.P. Avas Evam Vikas Parishad*[88], held that regularisation schemes are to be brought out only in exceptional circumstances, as a one-time measure for residential houses, and only after a detailed survey of land use, environmental impact, resource availability, proximity to water bodies and the larger public interest, for delay, the cost of construction and official laxity cannot shield illegal construction from action. A measure of this kind may correct a past default but may never become a parallel and permanent route that circumvents the regime it professes to restore. A valid

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[87] (1998) 231 ITR 24 (SC).
[88] 2024 INSC 990.

amnesty measure is thus exceptional in character, finite in duration and confined to its class.

57. The reason for such a high threshold lies in the nature of regularisation itself, for it cannot restore an unspoilt environment. At its highest it can compensate for a loss already suffered and provide for remedial measures in the time to come. But some environmental injuries cannot be compensated in money. The harm done to biodiversity, particularly to rare and endangered species, or the large-scale displacement of indigenous people, may inflict irreparable injury upon a habitat and upon lives long before any remedial measure can take effect. Such cases call for deeper scrutiny, and an industry is not regularised merely because the polluter will pay. Sometimes, on the other hand, the activity itself is one of environmental or public necessity, such as a common bio-medical waste treatment facility or a plant generating solar or wind energy in mitigation of climate change. In such cases the public interest in continuance weighs more heavily on the scale, alongside an exacting assessment of the damage and effective remediation.

58. In either case the fulcrum is the public interest. Breach of the prior clearance mandate cannot, by itself, generate an equity in favour of the violator, nor can the mere financial loss of the proponent supply a reason to relax the mandate. The question of continuance arises only where a supervening public interest enters the balance. That interest may lie in the protection of innocent third parties who had no role in the violation, such as homebuyers who have invested their savings in the project, workmen whose livelihood depends upon it, or the public at large where the activity performs an essential public, environmental or infrastructural function. In such cases, the consequence of breach is not determined mechanically by demolition alone. It must be moulded so that enforcement of the prior clearance regime does not visit disproportionate hardship upon persons who were not responsible for the illegality, while still preserving deterrence through stringent appraisal, remediation, compensatory liability and, where necessary, refusal of the offending portion. The exception is therefore not founded upon indulgence to the wrongdoer, but upon the need to reconcile environmental enforcement with a demonstrable public interest.

59. That is precisely the course this Court has taken where a completed project was found in violation of environmental norms, and the decisions disclose the reason in each. In the cases already discussed, the indulgence in *Lafarge* (supra) rested upon a revised clearance hedged with safeguards, in *Alembic* (supra) upon the disproportionality of revoking, years later, clearances obtained upon the government's own circular, in *Electrosteel* (supra) upon the economic contribution and employment of a running steel plant which ought not to be closed upon a mere technicality, in *Pahwa* (supra) upon the regulator's own misconception whose price would have been paid by the workmen, and in *D. Swamy* (supra) upon the fact that the facility regularised, a common bio-medical waste treatment plant, itself abates pollution. In *Goel Ganga Developers India Pvt. Ltd. v. Union of India*[89], a project built in excess of built-up area permitted by the EC was not demolished, in order to protect the interest of innocent third-party purchasers many of whom had occupied the premises. Deterrence was preserved instead by imposing damages of one hundred crore rupees or ten per cent of the project cost, whichever was higher. The developer was prohibited from further construction along with directions to refund the investment with interest at nine per cent per annum. In *Keystone Realtors Pvt. Ltd. v. Anil V. Tharthare*,[90] a residential project expanded beyond the prescribed threshold had been completed, so that undoing it would have served no one. The Court upheld the deposit of one crore rupees and directed an expert committee to bring the project's impact as close as possible to that contemplated in the clearance. Similarly, in *Babulal Kotecha* (supra) restoration of the lake filled and converted into a public

[89] (2018) 18 SCC 257.
[90] (2020) 2 SCC 66.

park was refused because undoing the park would have required felling the mature trees grown upon it, wounding the environment afresh while healing nothing, and in *Bindu Kapurea* (supra) the construction of road being complete, restitution was beyond reach, and the Court exacted compensatory terms instead, for a remedy that cannot restore may still make the polluter pay. Most recently, in *M.K. Ranjitsinh v. Union of India*,[91] the Court recalibrated its own blanket direction to place power lines underground across the habitat of the Great Indian Bustard, because the direction collided with the competing environmental imperative of promoting solar energy to mitigate climate change, and neither goal could be sacrificed at the altar of the other.

60. In each of these decisions the indulgence rested upon an identified supervening public interest, such as the protection of homebuyers or workmen or the benefit of the environment itself, and in each it was hedged with deterrent damages, refusal of the offending portion or supervised remediation. None of them holds that a proponent may build first and then claim regularisation upon the strength of the completed construction.

[91] *M.K. Ranjitsinh v. Union of India*, 2024 INSC 280, ¶¶ 53 and 60. In proceedings for the protection of the Great Indian Bustard, it was held that "While balancing two equally crucial goals - the conservation of the GIB on one hand, with the conservation of the environment as a whole on the other hand - it is necessary to adopt a holistic approach which does not sacrifice either of the two goals at the altar of the other".

61. These decisions indicate that, in the field of post facto clearance, the precautionary principle and the polluter pays principle are not antagonists between which the law must make an absolute and invariable choice. A measured regularisation may, in a given case, better serve the abatement of pollution that is the ultimate object of the 1986 Act. It compels a true assessment of the damage, exacts remediation from the polluter, protects those who would be ruined by demolition and draws the violator into the discipline of the Act. The choice is therefore not the binary one between condonation and demolition. It is the reconciliation, upon the facts, of competing imperatives, regularisation being kept to a narrow, time-bound, reasoned and supervised window. By these standards, and by the tests of reasonable classification and proportionality, the 2017 Notification must now be judged.

62. The terms of the 2017 Notification bear out the compliance character which these principles demand. It stipulates that the process shall serve as a deterrent to violation and that the pecuniary benefit of the violation and the damage to the environment shall be adequately compensated for. To that end it places no cap on environmental damage, preserving the authority's full capacity to assess compensation at a level both reparative and deterrent. The clearance in violation cases may be processed only at the Central level. It must be granted upon evaluation by the sectoral Expert Appraisal Committee even where the project falls in Category B, so that such cases are withdrawn from ordinary State level appraisal. The assessment of ecological damage and the preparation of the remediation and resource augmentation plans must be undertaken by a laboratory notified under the Act, accredited by the National Accreditation Board for Testing and Calibration Laboratories, or belonging to an institution of the Council of Scientific and Industrial Research. Finally, the measure is closed at both ends, eligibility being confined to projects in violation as on its date and applications to a window of six months. These are the features of a narrow corrective measure confined in time and in class.

63. So tested, the 2017 Notification is valid, but within narrow limits alone. It survives the test of reasonable classification. It does not place every violator on par with a law-abiding proponent, for it subjects violation cases to centralised appraisal, ecological damage assessment, remediation, resource augmentation and compensatory liability. Nor does it create an open class of future violators, both eligibility and duration being closed.

64. The Notification also satisfies proportionality. Its purpose is proper, for it draws subsisting violations into assessment, remediation and compliance rather than leaving them unregulated. Its terms bear a rational connection with that purpose. Its closed eligibility date and limited window satisfy necessity, because a narrower measure could not have addressed existing violations while preventing the exception from becoming a standing alternative to prior clearance. Finally, the balance is preserved only because the measure is exceptional, time-bound, centrally appraised and remedial in character. A scheme that permitted regularisation upon no more than payment of compensation, without a closed class, a limited window and a supervening public interest, would stand on a different footing. By its breadth and want of an end, it would supplant the prior clearance regime under the 2006 Notification and render nugatory the precautionary principle on which that regime rests.

65. The petitioners also assail the notification upon the principle of non-regression. The challenge is misplaced. The principle operates not as a binding mandate whose breach is by itself a ground of invalidity but as a guiding principle drawn from non-binding international law. In *Hanuman Laxman Aroskar v. Union of India*,[92] Chandrachud J. referred to the 13 principles of the Environmental Rule of Law adopted in the IUCN World Declaration while holding

[92] (2019) 15 SCC 401.

that the NGT had erred in taking an indulgent view of defects in a prior EC. That Declaration is neither a binding treaty nor customary international law. It entered the discourse through soft law and is of persuasive character alone. Such principles may temper an executive measure but cannot fetter the power to amend or supersede an earlier notification under Section 21 of the General Clauses Act so long as the object of the parent Act is preserved. Nor is the principle consistently honoured in international practice. Developed countries, though bearing a greater measure of historical responsibility, have resiled from binding treaty commitments previously undertaken by them. The United States, historically the largest carbon emitter, withdrew from the Paris Agreement with effect from 27.01.2026 and by a presidential memorandum dated 07.01.2026 directed its withdrawal from the United Nations Framework Convention on Climate Change itself. A principle of persuasive value cannot be read to deny a nation the sovereign power to recalibrate its environmental measures. To do so, even as the developed world retreats from its binding commitments, would turn common but differentiated responsibilities into an unequal and discriminatory burden upon developing nations. A corrective measure so confined in duration, which exacts remediation and secures compliance, cannot be condemned for non-regression or for breach of Article 21, being aligned to that very object, the preservation of the environment through control and abatement of pollution.

66. We hold the 2017 Notification to be a valid delegated measure engrafting a narrowly tailored time-bound violation-management scheme based on proportionality and reasonableness without upsetting the foundations of the prior environmental clearance regime founded on the precautionary principle.

V. The 2021 Office Memorandum

67. The second impugned instrument is the 2021 Office Memorandum, an executive instruction issued on 07.07.2021 by the MoEFCC, purportedly in compliance with the direction of the National Green Tribunal in *Tanaji B. Gambhire* (supra) that a Standard Operating Procedure be laid down for the grant of EC in cases of violation. Under the Office Memorandum, a project not permissible for clearance is liable to be demolished or closed. A permissible project is to remain closed until clearance is obtained, and such EC is to be granted only after assessment of ecological damage and preparation of plans for remedial measures and augmentation of natural and community resources, stated to be in line with the polluter pays principle. A completed project is to be appraised as if it were a new proposal and, if found permissible, granted clearance effective from the date of its issuance. The compensation is fixed at one per cent of the project cost, together with 0.25 per cent of the turnover during the period of violation where operations have commenced, and is halved where the violation is self-reported. The Office Memorandum does not prescribe any cut-off date or identify any class of eligible projects.

68. The challenge to the 2021 Office Memorandum is founded, at the threshold, on the source of power. It is contended that the Office Memorandum, being an executive instruction, could not alter, amend or dilute the 2006 Notification. Reliance is placed on *Vanashakti-I*, where it was observed that the Office Memorandum does not relate to exercise of any power under the 1986 Act or the Rules. The proposition of law underlying the contention is indisputable. Administrative instructions may supplement the statutory rules and notifications where they are silent on a particular matter, but they cannot amend, supersede, dilute or travel inconsistently with the statutory scheme already in force.[93]

[93] *Sant Ram Sharma v. State of Rajasthan*, AIR 1967 SC 1910, ¶ 7 (Constitution Bench). In a writ petition by an officer of the Indian Police Service challenging his supersession in promotion to the selection grade posts of Inspector General and Additional Inspector General of Police in Rajasthan, the statutory rules being silent on the principles of promotion to selection posts, it was held that "It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed".

Where there is a conflict, statutory rules and notifications must prevail.[94]

69. For similar reasons, the other OM dt. 19.02.2021 permitting post facto CRZ clearance being an administrative order could not have amended the CRZ notification requiring prior clearance and was rightly quashed prospectively in *Fatima* (supra).

70. The learned Additional Solicitor General further argued that the 2021 OM permitting post-facto EC occupies only a narrow interstitial space left unaddressed by the 2006 Notification. According to her, the 2006 Notification is silent as to the consequences of its breach, and the impugned 2021 OM was issued to occupy that limited unoccupied field of regularisation pursuant to the direction of the NGT in *Tanaji B. Gambhire* (supra). On this formulation, it was submitted that the 2021 OM operates only as a supplement to the 2006 Notification and does not run counter to it. To assess the validity of this proposition, the two instruments must be examined in juxtaposition.

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[94] *Employees' State Insurance Corporation v. Union of India*, 2022 SCC OnLine 69. Teaching faculty of an ESIC medical college claimed promotion upon two years of service under the Dynamic Assured Career Progression Scheme contained in an office memorandum of the Central Government, though the ESIC (Medical Teaching Faculty Posts) Recruitment Regulations, 2015 required five years. It was held that "In the event of a conflict between an executive instruction, an office memorandum in this case, and statutory regulations - the latter prevail".

Feature	2006 Notification (prior clearance regime)	2021 Office Memorandum (post facto regularisation)
Source and character	A delegated legislation under Sections 3(1) and 3(2)(v) of the 1986 Act read with Rule 5(3)(d), preceded by the draft notification S.O. 1324(E) dated 15.09.2005 and the consideration of objections.	Executive instruction issued by an officer of the Ministry. Its SOP and penalty (paragraphs 10 to 12) recite no exercise of the notification-making power under Section 3(2)(v) read with Rule 5(3)(d). Only the power to issue directions under Section 5 is invoked, and that only to identify violations (paragraph 13).
Point in time	Operates before the activity commences. Prior clearance under paragraph 2 is a condition precedent to any construction or preparation of land, except securing the land.	Operates after the activity has been commenced or completed. The appraisal under paragraph 11, Step 3 is of a project already built.
Screening and scoping	Screening (Stage 1, Form 1) and scoping (Stage 2, Terms of Reference within sixty days), under paragraph 7, are antecedent to and govern the activity.	No genuine screening or scoping is feasible. Under paragraph 11, Step 3(B) the Committee appraises the completed project "as if it was a new proposal", the

Feature	2006 Notification (prior clearance regime)	2021 Office Memorandum (post facto regularisation)
		determinants having already been altered.
Siting and alternatives	Form 1 and the EIA report (Appendix III) require examination of alternative sites, technology and layout before approval.	No alternative site can be examined. The project stands where it has been built.
Public consultation	Mandatory for Category A and B1 projects before the decision (Stage 3, paragraph 7, Appendix IV), when objections may still shape or defeat the project.	Ex ante consultation is impossible. Under paragraph 11, Step 3(B)(vii) the Committee *"may insist upon"* a hearing, at best a post-mortem upon a settled state of affairs.
Nature of assessment	Prospective and preventive. Assesses the likely impact of the activity against an undisturbed baseline.	Retrospective (paragraph 11, Step 3). Assesses only the damage already caused, not the comparative harm of removal.
Monetary consequence	None as a price of clearance. Clearance follows a clean prior appraisal.	A penalty under paragraph 12 (one per cent of project cost plus 0.25 per cent of turnover during the violation period, halved where self-reported), with a remediation bank guarantee

Feature	2006 Notification (prior clearance regime)	2021 Office Memorandum (post facto regularisation)
		(paragraph 11, Step 3(B)(viii)). A foreseeable, fixed proportion of cost.
Duration and class	A permanent statutory regime of general application.	Open-ended with no cut-off date unlike the six-month, fixed-date window of the 2017 Notification.
Effect of clearance	Permission to begin a project not yet begun (grant of prior EC under paragraph 8).	A clearance *"effective from the date of issue"* (paragraph 11, Step 3(B)(iv)) upon a project already begun.

71. This comparison exposes a glaring incompatibility between the 2006 Notification and the 2021 OM. The former rests on the premise that environmental impact assessment must precede the first irreversible act on site. The latter operates at the opposite end of the timeline, beginning after the very act prohibited by the 2006 Notification has taken place. By the time the appraisal under the 2021 OM begins, the project is not a proposal awaiting scrutiny but an existing fact on the ground. The Appraisal Committee is asked to appraise it *"as if it was a new proposal"*, but that fiction cannot restore the setting in which a new proposal is meant to be examined. There is no genuine screening or scoping left, no alternative site to compare and no public consultation that can still shape the environmental impact of the project. The OM changes the contours and dynamics of assessment, namely what is to be assessed, along with the criteria for the grant of EC under the 2006 Notification. Therefore, the OM supplants the 2006 Notification and does not merely supplement it.

72. Unlike the 2017 Notification, the 2021 OM abysmally fails the proportionality test. The former confined its appraisal of violator-applicants to a time-limited window. The latter has no cut-off date and no finite class. It therefore converts an exceptional violation-management response into a permanent parallel route, allowing a proponent to commence first and seek appraisal later upon payment of the stipulated costs. Upon the proportionality framework set out above, the instrument fails at the tests of rational connection and necessity. A measure unlimited in time and class, hedged with a capped and foreseeable compensation, travels beyond what the object of compliance requires and loses its nexus with the abatement of pollution.

73. An amnesty-regularisation scheme, as held above, is an exception, not a right. A proponent who has built in breach stands upon no footing of entitlement, and the departure can be justified only by a supervening public interest, never that of the proponent. Even then, such a departure must be effected through a measure authorised by, and answerable to, the law from which it departs. The 2021 Office Memorandum meets neither requirement. It is not so authorised, being an executive instruction and not a notification. And in allowing every permissible industry to be regularised upon no more than meagre compensation, it fails the test of reasonable classification noticed earlier. It selects no class upon any supervening public interest, and the only differentia it knows is the permissible character of the project. Permissibility of the activity is a lower threshold as compared to supervening public interest. It only asks whether the project could have been considered had the law been obeyed but does not explain why a project built in breach should be preserved despite the breach. It thus equates the compliant and the defiant, treats unequals as equals and to that extent offends Article 14. It yields to a principle of 'pollute and then pay' rather than to sustainable development. A project must survive upon its own strength, and not because the polluter has paid.

74. The 2021 OM also cannot derive legitimacy from the NGT's direction in *Tanaji B. Gambhire* (supra), which it invokes as its warrant. The Tribunal directed only that *"a proper SOP be laid down for grant of EC in such cases so as to address the gaps in binding* *law and practice being currently followed".*[95] That direction must be read in context. The Tribunal was considering what the regulator ought to do after a violation had already occurred, in light of decisions where completed constructions received calibrated, case-specific relief rather than wholesale demolition. It was authorising a procedure for identifying violators, assessing damage and securing remediation within the discipline of the prior clearance regime. It does not authorise, and could not have authorised, an open-ended mechanism for regularising violations yet to occur, and that too by an administrative instruction. Its object was to plug enforcement gaps in the existing regime, not to supplant it by a standing ex post facto dispensation.

75. The decriminalisation of the offence does not improve the position. The Jan Vishwas amendments, as observed earlier, are confined to the penal consequences of breach. They cannot and do not authorise an administrative instruction to convert a mandatory prior clearance regime into a perpetual post facto clearance mechanism. A lax implementation regime, coupled with a regularisation scheme unlimited in time and subject to capped environmental compensation at a flea-bite level, renders the prior EC regime otiose, in fact and in law.

[95] *Tanaji B. Gambhire* (supra), order dated 24.05.2021, extracted in *D. Swamy* (supra), ¶ 30.

76. A further concern arises where the State is itself the project proponent and has violated the prior EC regime without justification. In such a case, the preserver of the rule of law is seen violating the law. The urgent need to fix accountability has now been statutorily addressed in the Jan Vishwas Act, 2023, which inserted Section 15B, making the Head of the Department liable in cases of breach. Any violation regularisation mechanism must further that legislative intent by fixing accountability and imposing individual costs, upon inquiry, on the officers responsible for wanton and unjustified violation. Future amnesty schemes, if any, should provide effective deterrent measures against individual public servants, including disciplinary action and personal liability for environmental damage, wherever the State or its instrumentalities, as project proponents, violate the prior EC regime.

77. In light of the above discussion, we hold the 2021 OM to be invalid and quash it with prospective effect. We do so using our powers under Article 142, taking into account two distinct reasons. First, considerable legal uncertainty prevailed regarding the validity of the impugned instruments and the processing and grant of ECs under them. By an interim order dated 02.01.2024, this Court initially stayed the operation of the 2021 OM. Thereafter, by orders dated 06.01.2025 and 19.02.2025, this Court permitted processing of applications already made for grant of ex post facto EC under the 2021 OM but withheld the final grant until further orders. On 16.05.2025, *Vanashakti-I* quashed both the 2017 Notification and the 2021 OM. In paragraph 35, the Bench extended the benefit of the ECs already granted under both instruments but did not extend such benefit to the pending applications. On 18.11.2025, the Review order recalled *Vanashakti-I.* Although Bhuyan J. did not agree with the majority to allow the review, in paragraph 55 of his dissenting opinion he opined that an accommodation could be made for individual project proponents whose applications were pending, by modification/clarification of paragraph 35 of *Vanashakti-I.*[96] Post the Review order, the MoEFCC by OM dated 20.01.2026 directed that all applications pending under the 2017 Notification and the 2021 OM be processed, the final grant remaining subject to further orders of this Court.

78. Second, supervening public interest is involved in several projects which have already been undertaken or substantially progressed in

[96] The Review, per Bhuyan J., ¶ 55. The applicants in Miscellaneous Application (Diary) No. 46855 of 2025 and Miscellaneous Application (Diary) No. 52650 of 2025, along with several similar applicants, sought a clarification and a declaration that the benefit of protection extended to the ECs already granted under the 2017 Notification in *Vanashakti-I* should apply to their projects also. Bhuyan J. opined: "I am of the considered opinion that the concerns of the individual applicants are capable of being accommodated by way of appropriate clarification and/or modification of paragraph 35 of the Vanashakti judgment. For that, the entire judgment in Vanashakti is not required to be recalled."

reliance upon the prevailing regulatory position. These include the AIIMS Medical College and Hospital building in the State of Odisha, the Centre of Excellence for Cancer Diseases in Tamil Nadu, several medical colleges, Vijayapura Airport in Karnataka, slum rehabilitation projects and irrigation projects intended for drought-prone areas. Unless the 2021 OM is prospectively overruled, projects already undertaken would have to be undone adversely affecting the overarching public purpose they serve.

VI. Fate of ECs Already Granted and Applications Pending Consideration

79. As we have quashed 2021 OM prospectively, in order to do complete justice between the parties we issue the following directions with respect to the ECs already granted or pending consideration under the 2017 Notification/2021 OM:

a. ECs granted to project proponents under the 2017 Notification and the 2021 OM till date shall remain valid, unless otherwise challenged on merits.

b. All pending applications made by project proponents under the 2017 Notification or the 2021 OM shall be taken to their logical conclusion in accordance with law.

c. Any application dismissed, returned or delisted solely with reference to the stay order dated 02.01.2024 and/or the judgment in *Vanashakti-I* may be reconsidered by the authority concerned in light of the observations made in this judgment, particularly the prospective quashing of the 2021 OM.

d. No fresh application for grant of EC under the aforesaid instruments shall be entertained.

e. The government is restrained from issuing administrative orders in future for grant of EC in respect of projects which have commenced in contravention of the prior EC regime under the 2006 Notification.

CONCLUSION

80. We hold as follows:

(i) The prior EC regime under the 2006 Notification is mandatory and unless amended by an appropriate notification, would not accommodate grant of post facto EC or retention of projects where constructions have commenced or processes begun without a valid EC.

(ii) The observations in *Common Cause* (supra) and *Alembic* (supra) that ex post facto EC is alien to environmental jurisprudence must be seen in the statutory context in which they were made, namely the 1986 Act and the clear and unequivocal words *"prior environmental clearance"* in the 2006 Notification. They do not place a clog on the power of the Central Government to issue an appropriate narrowly tailored amnesty notification in supervening public interest as an exception to the 2006 Notification.

(iii) The decriminalisation of the regulatory contraventions under the 1986 Act through the Jan Vishwas Act, 2023 reinforces our conclusion that the Central Government has ample power under Section 3 to issue appropriate notifications formulating amnesty schemes with regard to such classes or categories of non-compliant projects whose sustainability is necessary to subserve larger public interest.

(iv) While *Common Cause* (supra) and *Alembic* (supra) deal with the normative state of law prevailing then, *Pahwa* and *D. Swamy* (supra) deal with the consequences of breach of the prior EC regime in light of the 2017 Notification/2021 OM. Their ratios must be read in the context of their respective factual matrices and not treated as statutes having universal application. We further hold that *Electrosteel* (supra) was decided in the facts of the case and the observation therein that the 1986 Act and the 2006 Notification accommodate grant of ex post facto EC ignores the mandatory character of the prior EC requirement and does not lay down a correct interpretation of either the Act or the Notification.

(v) We approve the observations in *Pahwa* and *D. Swamy* with regard to the 2017 Notification and hold that the said amending notification is a valid narrowly tailored and time-bound delegated legislation traceable to Section 3 of the 1986 Act read with Section 21 of the General Clauses Act.

(vi) The 2021 OM is an administrative order and envisages a perpetual regime for grant of EC to projects undertaken without prior EC. It substantially alters the nature of enquiry as well as the criteria for grant of EC under the 2006 Notification. 2021 OM thereby supplants an earlier delegated legislation through an administrative instruction, which is impermissible in law. Even otherwise, being a perpetual amnesty scheme applicable to all permissible projects, it fails to lay down an intelligible differentia for selection of projects for grant of post facto EC having rational nexus to supervening public interest and is thereby ultra vires the object of 1986 Act, namely preservation of environment through a balanced approach between precautionary principle and sustainable development. Given these circumstances, the OM does not satisfy the test of proportionality and reasonableness and is violative of Articles 14 and 21 of the Constitution. Thus, the 2021 OM is quashed but with prospective effect, keeping in mind the prevailing confusion with regard to validity of the impugned instruments and supervening public interest. Consequently, we overrule *Pahwa* (supra) and *D. Swamy* (supra) to the extent they incorrectly treat the 2021 OM as valid and traceable to the 2017 notification.

(vii) All ECs granted under the 2017 Notification or the 2021 OM shall remain valid unless individually assailed in accordance with law.

(viii) All applications for grant of EC made under the impugned instruments, whether they remain pending or stand dismissed solely with reference to the stay order dated 02.01.2024 and/or the judgment in *Vanashakti-I,* shall be dealt with in terms of the directions in paragraph 79 of this judgment.

(ix) No further application for grant of ECs under the 2017 Notification and the 2021 OM shall be entertained. Central Government is also restrained from passing administrative orders in future to grant ex post facto ECs to projects which commenced in violation of 2006 Notification, save and except by way of a valid notification in exercise of powers under section 3 of the 1986 Act.

(x) It is clarified that our directions shall not constrain the powers of this Court to grant ex post facto EC under Article 142 to do complete justice in appropriate cases.

81. With these directions,

(i) Writ Petitions and Miscellaneous Applications are disposed of.

(ii) Civil Appeal Nos.381-382 of 2025, challenging the prospective operation of Madras High Court judgment in *Fatima* (supra), are dismissed.

(iii) The appeal filed by the State of Tamil Nadu against the judgment in *Fatima*, being C.A. No.8253 of 2026, may be disposed of in light of the findings and observations in this judgment.

(iv) Pending Interlocutory Application (s), if any, shall stand disposed of.

SLP (C) No.8187 of 2025

82. The SLP assails the judgment dated 19.03.2025 passed by the Bombay High Court in Writ Petition (L) No. 8110 of 2025, whereby the closure of a mall was upheld. Since the challenge is not confined to a prayer for post facto EC under the 2017 Notification, but also raises other grounds, the matter is factually distinguishable. Accordingly, the Registry is directed to de-tag the matter and list it before appropriate Bench for hearing as per Rules.

...........................CJI
(SURYA KANT)

................................J.
(JOYMALYA BAGCHI)

................................J.
(VIPUL M. PANCHOLI)

NEW DELHI;
JULY 29, 2026.