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No Amnesty by Circular: The Supreme Court Ends Indefinite Ex-Post-Facto Green Clearances

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No Amnesty by Circular: The Supreme Court Ends Indefinite Ex-Post-Facto Green Clearances

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✓ Every fact web-verified against primary sources

A Supreme Court bench led by Chief Justice of India Surya Kant, with Justices Joymalya Bagchi and Vipul Pancholi, quashed a 2021 Ministry of Environment, Forest and Climate Change Office Memorandum that had allowed indefinite retrospective, or “ex-post-facto,” environmental clearances for projects begun without prior approval.

WHAT WAS STRUCK DOWN, AND WHY

PARAMETER	DETAIL
Case	Vanashakti v. Union of India (2026 INSC 761)
Pronounced	29 July 2026
Instrument struck down	MoEFCC Office Memorandum, 2021
Governing framework	Environment (Protection) Act, 1986; EIA Notification, 2006
Core holding	An Office Memorandum cannot override the mandatory prior-clearance requirement
What remains permitted	A narrowly tailored, time-bound statutory amnesty notification in exceptional cases
What is now barred	A perpetual regularisation scheme run through administrative circulars
Effect of the ruling	Prospective: clearances already granted under the 2021 OM (and an earlier 2017 notification) remain valid unless individually challenged

The **EIA Notification, 2006**, issued under Section 3 of the **Environment (Protection) Act, 1986**, requires prior environmental clearance before a project in a specified category commences construction or operation. The logic is straightforward: environmental impact must be assessed and mitigated **before** irreversible ground-level changes occur, not audited after the fact when the damage, if any, has already been done. The 2021 Office Memorandum inverted this logic for violators, allowing project proponents who had started construction without clearance to apply for a retrospective clearance instead of facing closure or demolition, effectively converting a strict prior-approval regime into an optional one for anyone willing to risk starting first and regularising later.

AN OFFICE MEMORANDUM VS A STATUTORY NOTIFICATION

The Court's central legal distinction is procedural, and it is exactly the kind of distinction UPSC likes to test precisely:

INSTRUMENT	LEGAL CHARACTER	CAN IT CREATE AN EXCEPTION TO A STATUTORY RULE?
Statutory notification (under Section 3, EP Act 1986)	Delegated legislation, subject to the rule-making procedure and parliamentary oversight built into the parent Act	Yes, if issued through the proper delegated-legislation route
Office Memorandum (OM)	Internal executive instruction, an administrative circular	No, an OM cannot override or create exceptions to a statutory prior-clearance mandate

An Office Memorandum is a routine administrative communication used to convey internal instructions within government; it does not go through the same rule-making, publication and, where required, parliamentary-laying procedure that a statutory notification under a specific Act does. Using an OM to indefinitely suspend a statutory prior-clearance requirement, in the Court's reasoning, let the executive achieve through an internal circular what it could only properly achieve, if at all, through a validly issued statutory instrument.

THE DOCTRINAL ANCHORS

PRINCIPLE	APPLICATION HERE
Precautionary principle	Environmental harm should be anticipated and prevented before it occurs, not remedied only after the fact
Polluter pays principle	A polluter should bear the cost of the harm caused, not be allowed to normalise the harm through a compliance shortcut
Delegated legislation limits	Executive instructions cannot expand or contract a statutory scheme beyond what the parent Act and its rule-making procedure permit

This continues a line of Supreme Court jurisprudence on ex-post-facto clearances, including its scrutiny of the government's earlier 2017 and 2021-vintage notifications attempting similar regularisation windows, each of which drew judicial pushback for effectively rewarding, rather than deterring, unauthorised construction.

WHAT THE GOVERNMENT CAN STILL DO

The judgment does not foreclose every form of regularisation. A government facing a genuine, narrow category of legacy violations, for instance projects that began before a specific clearance requirement was introduced, or where an ambiguity in classification caused good-faith non-compliance, retains the power to address that category through a **properly issued statutory notification**, time-bound and project-specific, rather than an open-ended administrative window available to any violator indefinitely.

UPSC RELEVANCE

GS Paper 3: Conservation, environmental pollution and degradation; [environmental impact assessment](#).

GS Paper 2: Separation of powers; delegated legislation and its limits; [judicial review](#) of executive action.

Prelims pointers:

- Struck-down instrument: **MoEFCC Office Memorandum, 2021**.
- Governing statute: **Environment (Protection) Act, 1986**; specific instrument: **EIA Notification, 2006**.
- Case: **Vanashakti v. Union of India** (2026 INSC 761), pronounced **29 July 2026**.
- Bench: **CJI Surya Kant, Justices Joymalya Bagchi and Vipul Pancholi**.
- Key doctrines: **precautionary principle, polluter pays principle**.
- Distinction tested: a **statutory notification** (delegated legislation) versus an **Office Memorandum** (internal administrative instruction).

★ FACTS CORNER, KNOWLEDGE PEDIA

THE RULING:

Struck down: MoEFCC Office Memorandum, 2021, allowing indefinite ex-post-facto environmental clearances.

Bench: CJI Surya Kant, Justices Joymalya Bagchi and Vipul Pancholi.

Held: only a statutory notification, not an internal OM, can create an exception to the EIA Notification, 2006's prior-clearance mandate.

LEGAL FRAMEWORK:

Environment (Protection) Act, 1986, Section 3: empowers the Centre to restrict activities via statutory notification.

EIA Notification, 2006: mandates prior environmental clearance before project commencement.

DOCTRINES INVOKED:

Precautionary principle: prevent harm before it occurs.

Polluter pays principle: cost of harm borne by the polluter, not normalised through shortcuts.

Sources: Supreme Court of India, Ministry of Environment, Forest and Climate Change, The Indian Express

Source: No Amnesty by Circular: The Supreme Court Ends Indefinite Ex-Post-Facto Green Clearances —
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