

GOVERNMENT OF INDIA
MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

LOK SABHA
UN-STARRED QUESTION NO. 2163
TO BE ANSWERED ON 23.09.2020

Draft Environmental Impact Assessment, 2020

2163. SHRI HIBI EDEN:

Will the Minister of ENVIRONMENT, FOREST AND CLIMATE CHANGE be pleased to state:

- (a) whether the Hon'ble Supreme Court has observed that Post-facto Environment Clearance is violative of the fundamental principles of environmental jurisprudence, if so, the details thereof;
- (b) whether the Government has given any undertaking before the Madras High Court that no more extension of time will be granted for post facto Environment Clearances, if so, the details thereof; and
- (c) whether there is any provision for post facto clearance in the EIA 2020 draft notification; and
- (d) if so, the details thereof?

ANSWER

MINISTER OF STATE IN THE MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE
(SHRI BABUL SUPRIYO)

(a) to (d): The draft EIA Notification 2020 does not provide for *ex post facto* clearance to violation cases. The Environment Clearance shall be granted only prospectively as also held by the Hon'ble Supreme Court in the case of Common Cause Vs. Union of India. Clause 22 (14) of the draft EIA Notification 2020 clearly specifies that the project proponent is liable for action under Section 19 of the Environment Protection Act 1986 for the violations committed by it. In addition, the draft notification also lays down additional liability on the project proponent for causing damage to the environment through assessment of environment damage caused, remedial plans and community augmentation plan (reference clause 22(5) of the draft notification). The Hon'ble High Court of Madras, in W.M.P.No.3361 and 3362 of 2018 in the matter of Appaswamy Real Estates Ltd. and ors vs. Puducherry Environment Protection Association vide order dated 14.03.2018 extended the time window of the notification dated 14.03.2017 up to 13.04.2018. Since then, the Hon'ble Supreme Court has enunciated the Principles of 'Polluter Pays' and 'Proportionality' in various decisions viz. Indian Council for Enviro-Legal Action Versus Union of India (the Bichhri village industrial pollution case) (1996 [3] SCC 212); and Alembic Pharmaceuticals Ltd. *Versus* Rohit Prajapati & Ors. (2020 SCC Online SC 347), which forms the basis of the provisions regarding treatment of cases involving Violation in the Draft Environment Impact Assessment Notification 2020.
