
BSOLS 1st National Moot Court Competition, 2026

Before

THE HON'BLE SUPREME COURT OF AURORA

W.P.(Civil) No. _____ of 2026

ECOGUARD ALLIANCE AND OTHERS..... APPELLANT

VS.

UNION OF AURORA AND OTHERS.....RESPONDENT

MEMORIAL *for* APPELLANT

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- Aurora–Zenith Bilateral Investment Treaty
- International Commission on Climate Change Advisory Opinion (2025)
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- Report of the UN Special Rapporteur on the Rights of Indigenous Peoples (Mission to Aurora, 2023)
- World Commission on Environment and Development, *Our Common Future* (Brundtland Report, 1987)

STATEMENT OF JURISDICTION

The Counsel humbly submits before this Hon'ble Supreme Court of the Republic of Aurora that the present Writ Petition is maintainable under Article 32 of the Constitution of Aurora, which guarantees the right to move the Supreme Court for the enforcement of Fundamental Rights.

Article 32 provides:

"The right to move the Supreme Court by appropriate proceedings for the enforcement of the Fundamental Rights conferred by this Part is guaranteed. The Supreme Court shall have the power to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part."

The present Petition seeks enforcement of the Petitioners' Fundamental Rights guaranteed under Articles 14, 19 and 21 of the Constitution of Aurora. Accordingly, the Petitioners have rightly invoked the extraordinary writ jurisdiction of this Hon'ble Court under Article 32.

STATEMENT OF FACTS

The Evergreen Rainforest Reserve ("ERR"), situated in the Verdantia Highlands of the Republic of Aurora, is a UNESCO World Heritage Site, a Ramsar Wetland, and the habitat of the critically endangered Aurora Tiger. It is also home to the Woodfolk Clan, River Spirits Group, and Hillcrest Peoples, whose community forest rights are recognised under the Forest Rights Act, 2006. Aurora is a party to several international environmental and indigenous rights instruments, including the Convention on Biological Diversity, the Ramsar Convention, ILO Convention No. 169, the Nagoya Protocol, and the Paris Agreement.

Pursuant to its National Green Energy Initiative, the Union of Aurora approved the HydroMine Nexus Project, comprising a 2,000 MW hydroelectric facility integrated with a rare earth mining project, within the ERR. The Project was awarded to MegaCorp Industries Pvt. Ltd., a subsidiary of MegaCorp Global S.A., and designated as a "Tier 1 Priority Project", despite the ERR being identified as a protected carbon sink under Aurora's Nationally Determined Contributions.

On 10 March 2022, MegaCorp submitted an Environmental Impact Assessment ("EIA") prepared by GeoConsult Pvt. Ltd. The EIA omitted significant environmental risks, including reservoir-induced seismicity and lifecycle greenhouse gas emissions. Nevertheless, on 20 December 2022, the National Environment Regulatory Authority ("NERA") granted Environmental Clearance by invoking "overriding national interest", without conducting a public hearing in the affected tribal areas or consulting the Ministry of Tribal Affairs.

The consultation process was conducted in the national language, with inadequate notice and inaccessible venues. The Petitioners allege that the Gram Sabha Resolution was manipulated through inducements offered to community leaders and did not reflect the genuine consent of the affected communities. It is further alleged that Traditional Ecological Knowledge, shared during a purported heritage survey, was subsequently used to identify commercially exploitable mineral deposits without the consent of the indigenous communities or any benefit-sharing arrangement. Subsequently, an independent expert assessment commissioned by the National Green Tribunal identified serious deficiencies in the EIA, while the UN Special Rapporteur on the Rights of

Indigenous Peoples concluded that the Project failed to satisfy internationally recognised standards of Free, Prior and Informed Consent. On 1 May 2024, blasting operations allegedly triggered a landslide at Aranya Gram, resulting in twenty deaths, widespread displacement, mercury contamination, and severe ecological damage affecting the livelihood, health, and culture of the indigenous communities.

Aggrieved by the grant of the Environmental Clearance, the violations of constitutional and statutory safeguards, and the environmental and human consequences of the HydroMine Nexus Project, the Petitioners have invoked the jurisdiction of this Hon'ble Court under Article 32 of the Constitution, seeking appropriate constitutional reliefs.

ISSUES RAISED

ISSUE I

Whether the Environmental Clearance granted to the HydroMine Nexus Project is liable to be quashed for violating mandatory procedural requirements under domestic and international law?

ISSUE II

Whether the HydroMine Nexus Project violates the fundamental rights of the Forest Dweller Tribes under Articles 14, 19 and 21 by failing to obtain valid Free, Prior and Informed Consent under the Forest Rights Act, 2006, ILO Convention No. 169 and UNDRIP, and whether the misappropriation of Traditional Ecological Knowledge independently vitiates the Project clearance?

ISSUE III

Whether MegaCorp Industries attracts absolute liability for the deaths and environmental harm caused by the HydroMine Nexus Project; whether MegaCorp Global S.A. can be held liable through veil-lifting and direct parent responsibility; whether the Aurora-Zenith BIT bars constitutional relief; and whether the Union unconstitutionally encroached upon Verdantia's concurrent powers over forests and tribal governance?

ISSUE IV

Whether the right to a clean, healthy and sustainable environment under Article 21, read with the principle of intergenerational equity, imposes a constitutional duty upon the State to ensure that infrastructure labelled as "green" delivers genuine environmental benefits, and whether the approval of the HydroMine Nexus Project violates the Public Trust Doctrine.

SUMMARY OF ARGUMENTS

I. It is humbly submitted that the Environmental Clearance granted to the HydroMine Nexus Project is liable to be quashed as it was granted in violation of mandatory procedural requirements governing environmental decision-making. The approval was founded upon a deficient and non-independent Environmental Impact Assessment, granted without a mandatory public hearing and without compliance with the Forest Rights Act, 2006. Further, the decision is vitiated by Wednesbury unreasonableness, as the approving authority failed to consider material environmental risks. Consequently, the clearance is contrary to the Precautionary Principle, Sustainable Development and the Public Trust Doctrine.

II. It is humbly submitted that the HydroMine Nexus Project violates the constitutional, statutory and international law rights of the affected indigenous communities. The Respondents failed to obtain valid Free, Prior and Informed Consent, relied upon an invalid Gram Sabha Resolution, infringed Articles 14, 19 and 21, and misappropriated Traditional Ecological Knowledge without consent or benefit-sharing. Further, Aurora's obligations under ILO Convention No. 169, UNDRIP and the Nagoya Protocol reinforce the constitutional protection available to indigenous communities, rendering the Project approvals unconstitutional.

III. It is humbly submitted that MegaCorp Industries incurs absolute liability for the deaths, displacement and environmental harm caused by the HydroMine Nexus Project, while MegaCorp Global S.A. is jointly liable under the doctrines of lifting the corporate veil and direct parent-company responsibility. The Aurora–Zenith BIT does not bar constitutional relief, and the Union cannot rely upon Entry 52 or Article 253 to override Verdantia's constitutional role in matters relating to forests, wildlife and tribal governance.

IV. It is humbly submitted that Article 21 guarantees a right to a clean, healthy and sustainable environment and imposes a positive constitutional obligation upon the State to ensure that development is environmentally sustainable. The HydroMine Nexus Project fails to satisfy this standard and causes irreversible ecological harm. Further, the approval of the Project violates the Public Trust Doctrine and the principle of intergenerational equity, rendering the impugned approvals constitutionally unsustainable.

ARGUMENTS ADVANCED

THE ENVIRONMENTAL CLEARANCE GRANTED IS ULTRA VIRES MANDATORY PROCEDURAL REQUIREMENTS:

It is humbly submitted that the Environmental Clearance granted by National Environment Regulatory Authority on 20 December 2022 is void ab initio as it was granted in violation of three mandatory requirements under domestic law: i) Independently prepared Environment Impact Assessment (“EIA”), ii) Public hearing in areas of affected persons, iii) Inter Ministerial Consultation. The violation of any one of these requirements vitiates the clearance. They show a clearance process that was illegitimate from the outset.¹

I.A.1 The Proponent-Commissioned EIA is not Independent

The EIA Notification, 2006² mandates submission of an EIA to NERA as a precondition for environmental clearance. The main objective behind this requirement is to provide NERA with an independent, fair and fully informed environmental assessment so that it may understand the project impacts better.³ In the present case, the EIA was commissioned and financed by MegaCorp Industries Pvt. Ltd., the very project proponent⁴. GeoConsult Pvt. Ltd. prepared the EIA under Terms of Reference (“ToR”) that excluded the most crucial environmental risks: i) seismic risk, ii) reservoir methane lifecycle iii) downstream bioaccumulation, and iv) Tiger corridor impact. These omissions are acknowledged in the EIA itself, which states that these matters were 'outside the Terms of Reference issued by NERA.' The ToR, being the document that defined the scope of inquiry was itself designed to avoid inquiry into the most dangerous risks. Such a conflict of interest has been condemned by this Hon’ble Court in *Hanuman Laxman Aroskar v. Union of India*⁵, where it was held that an EIA must be a genuine assessment and not a mere procedural formality.

I.A.2 Public Hearing in Tribal Areas Was Suppressed Using a Non- Statutory Exemption

¹ *Lafarge Umiam Mining Pvt. Ltd. v. Union of India*, (2011) 7 SCC 338.

² Environmental Impact Assessment Notification, S.O. 1533(E), Gazette of India, Extraordinary, Part II, § 3(ii) (Sept. 14, 2006) (India).

³ *Supra* 1

⁴ Annexure A

⁵ *Hanuman Laxman Aroskar v. Union of India*, (2019) 15 SCC 401.

Clause 7(i)(III)(b) of the EIA Notification, 2006, read with Schedule IV⁶, mandates a public hearing in the project-affected area as a *sine qua non* for environmental clearance of Category A projects. Its omission is a jurisdictional defect that goes to the root of the clearance.⁷ Moreover, the doctrine of “colourable legislation” means things which cannot be done directly should not be done indirectly either.⁸ Here, the 'national security' label has been applied to achieve clearance without the public scrutiny and amounts to colourable exercise of power. The communities most affected by this project within the ERR were entirely excluded from any participation in the decision to approve this project. The EIA Notification, 2006, provides for certain specifically defined exemptions from public hearing requirements like road and highway expansions, irrigation projects etc.⁹. None of these apply to a hydroelectric-mining project in a protected forest area.

I.A.3 Violation of the Mandatory Inter-Ministerial Consultation Requirement

The Forest Rights Act, 2006¹⁰ (“FRA”), read with the Forest Conservation Act clearance framework and the Ministry of Environment's 3 August 2009 guidelines¹¹, makes settlement of forest rights and Gram Sabha consent mandatory before diversion of forest land. Since the Ministry of Tribal Affairs is the nodal authority for FRA implementation, forest clearances granted without ensuring FRA compliance and tribal-rights verification are legally vulnerable. This Court's decision in *Orissa Mining Corporation v. Ministry of Environment and Forests*,¹², is in consonance with this where it quashed a grant of Stage II clearance for bauxite mining in Odisha because Gram Sabha consent under the FRA had not been obtained. The Court held that FRA compliance is a condition precedent and not a post-clearance formality and any grant in violation of it will be void.

I.B THE ENVIRONMENTAL CLEARANCE MEETS THE WEDNESBURY UNREASONABLENESS TEST

⁶ Environmental Impact Assessment Notification, S.O. 1533(E), Gazette of India, Extraordinary, Part II, § 3(ii) (Sept. 14, 2006), cl. 7(i)(III)(b) (India).

⁷ *Sterlite Industries (India) Ltd. v. Union of India*, (2013) 4 SCC 575.

⁸ *K.C. Gajapati Narayan Deo v. State of Orissa*, AIR 1953 SC 375.

⁹ *Supra* 1

¹⁰ Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, No. 2 of 2007, §§ 3, 4(5), 6, India Code (2007); Forest (Conservation) Act, No. 69 of 1980, § 2, India Code (1980).

¹¹ Ministry of Environment & Forests, Govt. of India, Guidelines Regarding Diversion of Forest Land for Non-Forest Purposes Under the Forest (Conservation) Act, 1980—Ensuring Compliance of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, F. No. 11-9/1998-FC (Pt.) (Aug. 3, 2009).

¹² *Orissa Mining Corporation v. Ministry of Environment and Forests*, (2013) 6 SCC 476.

It is humbly submitted that the EC is liable to be quashed on grounds of Wednesbury unreasonableness. In *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation*¹³ the court applied this test to determine whether the impugned decision is so unreasonable that no reasonable authority, properly applying itself to the relevant law and material, could have arrived at it. NERA's clearance of this project meets this threshold on multiple grounds:

I.B.1 Approval Without Any Seismic Risk Assessment

NERA granted clearance for a project involving a 410 sq. km reservoir located only 14 km from the Verdantia Fault¹⁴ despite the GeoConsult EIA containing no seismic risk assessment whatsoever. Prof. Vega characterises this omission as "professionally indefensible" and notes that the reservoir would impose approximately 61 MPa of stress on the fault system. The Koyna Reservoir disaster that caused over 200 deaths in a similar geological setting is a clear precedent¹⁵ Environmental decision-makers are required to assess all foreseeable material risks in high-risk infrastructure projects, and reliance solely on a proponent-funded assessment is constitutionally insufficient.¹⁶ The absolute absence of any seismic risk assessment for a large dam adjacent to an active fault system is evidence that NERA failed to exercise its expertise at all on this question.

I.B.2 No Lifecycle GHG Assessment and the False Promise of “Green Infrastructure”

NERA approved the project as a climate-positive intervention without undertaking any lifecycle greenhouse gas assessment. Where scientific uncertainty exists, the precautionary principle requires the regulator to withhold approval until environmental safety is established¹⁷. Prof. Vega's assessment establishes that during Years 1-10 of operation, which is also exactly the window of Aurora's 2030 NDC target, the reservoir will be a net greenhouse gas emitter of approximately 20.7 Mt CO₂e. Moreover, Aurora's NDC simultaneously designates the ERR as a “Priority Carbon Sink Zone”¹⁸, committing to “no net deforestation” within the Reserve, while classifying the HydroMine Nexus, which requires heavy deforestation and inundation as a “Tier 1 Priority

¹³ *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948] 1 KB 223.

¹⁴ Annexure C, Section C.6

¹⁵ Mireia Tutusaus Luque, Matthias Schmitt & Stefan H. Doerr, Hydropower Reservoirs as a Notable Source of Greenhouse Gases: A Global Review, 8 *Environmental Challenges* 100560 (2022).

¹⁶ In *G. Sundarajan v. Union of India*, (2013) 6 SCC 620.

¹⁷ Rio Declaration on Environment and Development princ. 15, U.N. Doc. A/CONF.151/26 (Vol. I) (Aug. 12, 1992).; *Alembic Pharmaceuticals Ltd. v. Rohit Prajapati*, (2020) 17 SCC 157.

¹⁸ Annexure III

Project”¹⁹. A project that is a net climate polluter throughout the decade cannot be permitted to retain the “green infrastructure” label which would risk a misrepresentation under the Enhanced Transparency Framework of Article 13 of the Paris Agreement²⁰, and remove the very premise on which NERA’s “overriding national interest” justification is based.

I.B.3 Approval Despite Inadequate Aurora Tiger Habitat Assessment

The Aurora Tiger (*Panthera aurorae*) is a Critically Endangered species, endemic to the ERR, which is already below the 200-individual minimum viable population threshold. The IUCN Red List 2023 assessment says that its primary threat is the HydroMine Nexus project.²¹ GeoConsult assessed Aurora Tiger habitat impact only within the reservoir inundation zone and concluded that fragmentation would be 'moderate.' Prof. Vega's assessment shows that connected tiger habitat will be reduced from 4,500 sq. km to approximately 2,800 sq. km, severing the Central Corridor that links the Northern and Southern sub-populations. Without this corridor, the two sub-populations become genetically isolated, with a projected 73% local extinction probability within 50 years.²²

I.C THE PRECAUTIONARY PRINCIPLE, PUBLIC TRUST DOCTRINE, AND PRINCIPLE OF SUSTAINABLE DEVELOPMENT REQUIRE QUASHING OF THE EC

I.C.1 The Precautionary Principle

The Precautionary Principle has been incorporated into the domestic law of the Republic of Aurora consistent with this Court's holdings in the Vellore Citizens and Indian Council for Enviro-Legal Action line of cases.²³ Under this principle, where there is scientific uncertainty about irreversible environmental harm, the burden of proof lies on the project proponent to demonstrate that the activity will not cause such harm and not on the opponents of the project to demonstrate that it will.²⁴ In the present case, the risks are not uncertain. GeoConsult's EIA acknowledges that it has not conducted seismic risk assessment, methane lifecycle analysis, or downstream health risk assessment. Prof. Vega's independent report demonstrates that the risks are severe. In such circumstances, the Precautionary Principle requires quashing of the clearance.

¹⁹ Annexure H, § H.4.2 (“The Internal Contradiction”).

²⁰ Paris Agreement, 2015, art. 13.

²¹ Annexure G

²² Annexure C, § C.2.

²³ *Vellore Citizens Welfare Forum v. Union of India*, (1996) 5 SCC 647.

²⁴ *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, (1999) 2 SCC 718.

I.C.2 The Public Trust Doctrine

The Public Trust Doctrine as recognised by this Court in *M.C. Mehta v. Union of India*²⁵ and *Intellectuals Forum, Tirupathi*²⁶ holds that the State holds certain resources in trust for present and future generations.²⁷ The ERR is a UNESCO World Heritage Site, a Ramsar Convention wetland, and a UNESCO-designated Key Biodiversity Area. Under Aurora's own NDC, the ERR is identified as a Priority Carbon Sink Zone with a commitment to 'no net deforestation'.²⁸ This project requires the diversion of 782 hectares of forest and inundation of 410 sq. km of the ERR. A clearance that authorises this destruction on the basis of development benefits that has been shown to not actually materialise in the form claimed breaches the State's public trust obligations. *Therefore, the counsel for the Petitioner humbly pleads before the Hon'ble Supreme Court of Aurora that NERA's environmental clearance was unlawful and cannot be called 'green infrastructure'.*

II.THE HYDROMINE NEXUS PROJECT VIOLATES THE CONSTITUTIONAL, STATUTORY AND INTERNATIONAL LAW RIGHTS OF THE AFFECTED INDIGENOUS COMMUNITIES

It is humbly submitted that the HydroMine Nexus Project is liable to be set aside as it was approved in violation of the constitutional, statutory and international law rights of the affected indigenous communities. The Respondents failed to obtain valid Free, Prior and Informed Consent ("FPIC"), violated Articles 14, 19 and 21 of the Constitution, unlawfully misappropriated Traditional Ecological Knowledge ("TEK"), and acted in disregard of Aurora's obligations under ILO Convention No. 169, UNDRIP and the Nagoya Protocol. Accordingly, the impugned approvals are unconstitutional and liable to be quashed.

II.A: The Respondents Failed to Obtain Valid Free, Prior and Informed Consent (FPIC)

It is respectfully submitted that the HydroMine Nexus Project was approved without obtaining valid Free, Prior and Informed Consent ("FPIC") from the affected indigenous communities, in violation of Section 4(2)(e) of the Forest Rights Act, 2006, ILO Convention No. 169 and settled principles of indigenous self-governance.

²⁵ *M.C. Mehta v. Union of India*, (1997) 2 SCC 353.

²⁶ *Intellectuals Forum, Tirupathi v. State of Andhra Pradesh*, (2006) 3 SCC 549.

²⁷ *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267.

²⁸ Annexure H

In *Orissa Mining Corporation Ltd. v. Ministry of Environment & Forests*, this Hon'ble Court held that the Gram Sabha is competent to "safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and customary mode of dispute resolution," and directed that claims affecting religious and community rights be determined by the Gram Sabha itself²⁹. However, in the present case, the alleged Gram Sabha meeting was convened by the District Collector in the presence of Revenue and Police officials. Moreover, while the official resolution records unanimous approval, only 14 members supported the Project, 17 opposed it and 31 remained silent after being informed that silence would be treated as consent. Such a process cannot constitute a genuine expression of the community's will.³⁰

Further, in *Samatha v. State of Andhra Pradesh*, this Hon'ble Court observed that the object of the Fifth Schedule is to "preserve tribal autonomy, their culture and economic empowerment." The Respondents therefore cannot dilute statutory tribal safeguards by invoking economic development, energy security or climate objectives.³¹

The international standard is equally clear. In *Saramaka People v. Suriname*, the Inter-American Court held that "large-scale development or investment projects" affecting indigenous territories require the community's "free, prior and informed consent, according to their customs and traditions."³² The consultation process in the present case satisfies none of these requirements. The consent was not free, as MegaCorp representatives privately offered employment opportunities and monetary benefits to the Headman before he reversed his opposition; not prior, as the affected communities received only five days' notice through a notice board situated approximately 85 kilometres away; not informed, since the consultations were conducted in the national language without independent interpretation despite the communities primarily speaking Aranyabhasa, Naditibhasa and Girijanaboli; and finally, there was no genuine consent, as the recorded resolution did not reflect the actual voting outcome.³³

Accordingly, the Respondents failed to satisfy every essential element of FPIC. Since valid consent was a condition precedent to the diversion of tribal forest land, the approvals granted to the HydroMine Nexus Project are liable to be set aside.

²⁹ *Orissa Mining Corporation Ltd. v. Ministry of Environment & Forests*, (2013) 6 SCC 476.

³⁰ Moot Proposition, Annexure B, ¶ 7.

³¹ *Samatha v. State of Andhra Pradesh*, (1997) 8 SCC 191.

³² *Saramaka People v. Suriname*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 172 (Nov. 28, 2007).

³³ Moot Proposition, Annexure B, ¶ 7; Annexure F.3.1; Annexure F.3.2.

II.B: The Gram Sabha Resolution Dated 14 June 2022 Is Void and Cannot Constitute Valid Consent

It is respectfully submitted that the alleged Gram Sabha Resolution dated 14 June 2022 is legally invalid and incapable of constituting consent under the Forest Rights Act, 2006, ILO Convention No. 169 or UNDRIP. The present case concerns not a procedural irregularity, but a fundamentally defective process that failed to reflect the actual will of the affected indigenous communities.

Annexure B records that out of 62 adult members present, only 14 voted in favour of the Project, 17 expressly opposed it and 31 remained silent after being informed that silence would be treated as consent. Despite these facts, the official minutes recorded unanimous approval. A resolution recording unanimity despite clear opposition cannot constitute a valid expression of community consent.³⁴

The seriousness of this defect is heightened by the constitutional status of the Gram Sabha under Article 243A. The UN Special Rapporteur, after reviewing the resolution and conducting field investigations, found serious inconsistencies between the official record and the testimony of community members, and expressly concluded that the recorded resolution did not reflect the actual will of the community³⁵.

Further, the surrounding circumstances demonstrate that any purported consent was not free. Annexure B records sworn testimony that MegaCorp representatives privately met the Headman and discussed employment opportunities and cash payments before he changed his position regarding the Project. These allegations are independently corroborated by the Special Rapporteur, who found credible evidence that employment offers and monetary benefits were discussed with community leaders and that their public stance shifted thereafter.³⁶

In *Saramaka People v. Suriname*, the Inter-American Court held that, in relation to "large-scale development or investment projects" affecting indigenous territories, the State must "obtain their free, prior, and informed consent, according to their customs and traditions." ³⁷The UN Special Rapporteur expressly relied upon this standard and concluded that the consultation process adopted

³⁴ Moot Proposition, Annexure B, ¶ 7.

³⁵ Moot Proposition, Annexure F.3.2.

³⁶ Moot Proposition, Annexure B, ¶ 7; Annexure F.3.2

³⁷ *Saramaka People v. Suriname*, Preliminary Objections, Merits, Reparations & Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 172 (Nov. 28, 2007).

for the HydroMine Nexus Project failed to satisfy the requirements of FPIC. Consequently, even if the resolution had been accurately recorded—which is denied—the consent would remain vitiated by inducement and fail to satisfy the requirement of free consent under international law.

In *S.P. Chengalvaraya Naidu v. Jagannath*, this Hon'ble Court held that "a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eye of law" and that "fraud avoids all judicial acts, ecclesiastical or temporal." Applying this settled principle, a project clearance founded upon a fabricated Gram Sabha Resolution cannot survive judicial scrutiny. If the consent itself is tainted by fraud, misrepresentation and manipulation, every approval founded upon it is equally void *ab initio*.³⁸

Therefore, the alleged Gram Sabha Resolution dated 14 June 2022 is neither a genuine expression of community will nor valid consent under the FRA framework. It was procured through misrepresentation, manipulation and inducement, and consequently all subsequent approvals based upon that resolution are liable to be quashed.

II.C: The Project Violates Articles 14, 19 and 21 of the Constitution

It is respectfully submitted that the HydroMine Nexus Project violates Articles 14, 19 and 21 of the Constitution by depriving the affected tribal communities of their livelihood, environment, health and cultural rights through a process that is arbitrary, unfair and constitutionally unsustainable.

Under Article 21, this Hon'ble Court in *Olga Tellis v. Bombay Municipal Corporation* recognised that the right to livelihood forms an integral facet of the right to life³⁹. Further, in *Subhash Kumar v. State of Bihar*,⁴⁰ *Virender Gaur v. State of Haryana*⁴¹ and *M.C. Mehta v. Union of India*⁴², this Hon'ble Court consistently affirmed that the right to a wholesome and pollution-free environment is an indispensable component of Article 21. In the present case, groundwater samples reveal mercury levels at 4.2 times the WHO safe limit, eleven children have been diagnosed with neurological disorders consistent with methylmercury exposure, and twenty persons lost their lives

³⁸ *S.P. Chengalvaraya Naidu v. Jagannath*, (1994) 1 SCC 1.

³⁹ *Olga Tellis v. Bombay Mun. Corp.*, (1985) 3 SCC 545.

⁴⁰ *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598;

⁴¹ *Virender Gaur v. State of Haryana*, (1995) 2 SCC 577.

⁴² *M.C. Mehta v. Union of India*, (1987) 1 SCC 395.

in the Aranya Gram landslide, constituting a grave infringement of the rights to life, health and a clean environment.⁴³

Further, in *Maneka Gandhi v. Union of India*, this Hon'ble Court held that any procedure affecting life or personal liberty must be "right, just and fair" and not "arbitrary, fanciful or oppressive"⁴⁴. "The consultation process was conducted in a language that the affected communities could not understand and without independent translation, thereby denying them meaningful participation in decisions directly affecting their rights and livelihoods. Such a process manifestly fails the constitutional requirement of procedural fairness.

The Project also violates Article 14. In *E.P. Royappa v. State of Tamil Nadu*, this Hon'ble Court held that arbitrariness is antithetical to equality.⁴⁵ The grant of Environmental Clearance without the statutorily mandated tribal-area public hearing and the deliberate exclusion of the Ministry of Tribal Affairs from the approval process constitute manifestly arbitrary State action and are therefore liable to be struck down under Article 14.⁴⁶

The Project further violates Article 19(1)(g). The affected tribal communities depend upon fishing and the collection of forest produce as their primary means of livelihood. The drastic decline in fish catches and degradation of forest resources have substantially impaired these occupations without any constitutionally permissible restriction, thereby violating Article 19(1)(g).⁴⁷

In *Orissa Mining Corporation Ltd. v. Ministry of Environment & Forests (Niyamgiri)*, this Hon'ble Court recognised the right of indigenous communities to protect and preserve their cultural and religious relationship with sacred sites and community resources⁴⁸. The destruction of Kalpavriksha Konda and the damage to Naga Teerta directly interfere with these constitutionally protected rights.

Accordingly, the HydroMine Nexus Project violates Articles 14, 19 and 21 of the Constitution and is liable to be set aside.

II.D: Misappropriation of Traditional Ecological Knowledge (TEK) Independently Vitiates the Project Clearance

⁴³ Moot Proposition, Annexure B, ¶¶ 11–13; Annexure C.

⁴⁴ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

⁴⁵ *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3.

⁴⁶ Moot Proposition, Annexure A; Annexure B; Annexure C.

⁴⁷ INDIA CONST.art 19(1)(g).

⁴⁸ *Orissa Mining Corp. Ltd. v. Ministry of Env't & Forests*, (2013) 6 SCC 476.

It is respectfully submitted that the misappropriation of Traditional Ecological Knowledge ("TEK") constitutes an independent and sufficient ground to invalidate the Environmental Clearance. Even assuming, *arguendo*, that all other procedural defects were cured, the Environmental Impact Assessment ("EIA") remains fundamentally vitiated because its mineral-resource assessment was derived from knowledge obtained through deception.

Annexure B records that in 2019, GeoConsult representatives informed tribal elders that they were conducting a "scientific heritage survey" and requested them to identify sacred mineral springs, traditional salt-lick sites and natural mineral outcrops. The communities consented only to that limited purpose. However, the EIA subsequently identified Kalpavriksha Konda, Naga Teerta and Bhumi Mata Maidan as commercially exploitable mineral deposits without obtaining prior consent or providing any benefit-sharing arrangement.⁴⁹

Such conduct violates Article 8(j) of the Convention on Biological Diversity and Articles 5, 6, 7 and 12 of the Nagoya Protocol, which require prior informed consent and the fair and equitable sharing of benefits arising from the utilisation of traditional knowledge associated with biological resources. The same obligation is reflected in Sections 21, 36 and 41 of the Biological Diversity Act, 2002, which provide for fair and equitable benefit-sharing, protection of traditional knowledge and participation of local biodiversity institutions.⁵⁰

In *Divya Pharmacy v. Union of India*, the Uttarakhand High Court observed that "indigenous and local communities, who either grow biological resources, or have a traditional knowledge of these resources, are the beneficiaries under the Act. In return for their parting with this traditional knowledge, certain benefits accrue to them as FEBS (Fair and Equitable Benefit Sharing)." ⁵¹The Court thus recognised that communities possessing traditional knowledge have a statutory entitlement to fair and equitable benefit-sharing. In the present case, although the Respondents commercially exploited the communities' Traditional Ecological Knowledge for mineral prospecting, neither prior consent nor any benefit-sharing arrangement was provided.

Moreover, in *S.P. Chengalvaraya Naidu v. Jagannath*, this Hon'ble Court held that "a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eye of law" and that

⁴⁹ Moot Proposition, Annexure B, ¶¶ 8–10.

⁵⁰ Convention on Biological Diversity art. 8(j), June 5, 1992, 1760 U.N.T.S. 79; Nagoya Protocol arts. 5–7, 12, Oct. 29, 2010; Biological Diversity Act, No. 18 of 2003, §§ 21, 36, 41 (India).

⁵¹ *Divya Pharmacy v. Union of India*, 2018 SCC OnLine Utt 667.

"fraud avoids all judicial acts, ecclesiastical or temporal." ⁵²Applying this settled principle, the mineral-resource assessment incorporated in the EIA was founded upon Traditional Ecological Knowledge obtained through misrepresentation as to the purpose for which it was collected. Consequently, the very foundation of the Project's mining justification stands vitiated by fraud and cannot be sustained in law.

Accordingly, the misappropriation of Traditional Ecological Knowledge constitutes an independent and self-sustaining ground for setting aside the Environmental Clearance, irrespective of the separate violations relating to Free, Prior and Informed Consent established herein.

II.E. ILO Convention No. 169, UNDRIP and the Nagoya Protocol are Justiciable and Relevant in Aurora

It is respectfully submitted that the Respondents cannot evade their international obligations by contending that ILO Convention No. 169, UNDRIP and the Nagoya Protocol are non-justiciable. These instruments constitute important interpretative aids in enforcing the fundamental rights guaranteed under Articles 14, 19 and 21 of the Constitution.

In *Vishaka v. State of Rajasthan*, this Hon'ble Court held that "any international convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee." Since Aurora ratified ILO Convention No. 169 in 2005, its obligations relating to Free, Prior and Informed Consent ("FPIC") legitimately inform the content and scope of Articles 14, 19 and 21⁵³. Significantly, the UN Special Rapporteur expressly relies upon *Vishaka* and observes that ratified international treaties are directly relevant in interpreting the rights of indigenous communities in Aurora.⁵⁴

Further, in *Vellore Citizens Welfare Forum v. Union of India*, this Hon'ble Court held that the Precautionary Principle and the Polluter Pays Principle are "part of the environmental law of the country." The Court further recognised Sustainable Development as the balancing concept between ecology and development. The same constitutional approach applies in the present case, where the Project threatens irreversible harm to indigenous communities, biodiversity and critically endangered species.⁵⁵

⁵² *S.P. Chengalvaraya Naidu v. Jagannath*, (1994) 1 SCC 1.

⁵³ *Vishaka v. State of Rajasthan*, (1997) 6 S.C.C. 241.

⁵⁴ Report of the U.N. Special Rapporteur on the Rights of Indigenous Peoples (Mission to Aurora, 2023), Annex. F.2.

⁵⁵ *Vellore Citizens Welfare Forum v. Union of India*, (1996) 5 S.C.C. 647.

Moreover, Annexure F records that UNDRIP reflects and crystallises customary international law concerning the collective rights of indigenous peoples. The UN Special Rapporteur therefore treats FPIC, protection of indigenous lands and meaningful participation in decision-making as binding international standards applicable to Aurora.⁵⁶

Accordingly, ILO Convention No. 169, UNDRIP and the Nagoya Protocol are not merely persuasive international instruments but constitute significant interpretative aids for giving full effect to the constitutional guarantees under Articles 14, 19 and 21. The Respondents' contention that these obligations are non-justiciable is therefore liable to be rejected.

Therefore, the Petitioners respectfully pray that this Hon'ble Court declare that the HydroMine Nexus Project was approved in violation of the constitutional, statutory and international law rights of the affected indigenous communities; hold that the consultation process and Gram Sabha Resolution do not constitute valid Free, Prior and Informed Consent; declare the misappropriation of Traditional Ecological Knowledge unlawful; and consequently quash all approvals granted to the Project.

III.THE RESPONDENTS ARE LIABLE FOR THE HARM CAUSED BY THE HYDROMINE NEXUS PROJECT, AND NEITHER THE AURORA–ZENITH BIT NOR THE UNION'S EXERCISE OF POWER BARS CONSTITUTIONAL RELIEF

It is respectfully submitted that MegaCorp Industries incurs absolute liability for the deaths, displacement and environmental harm caused by the HydroMine Nexus Project, while MegaCorp Global S.A. is jointly liable under the doctrines of lifting the corporate veil and direct parent-company responsibility. The Aurora–Zenith BIT does not preclude this Hon'ble Court from granting constitutional relief, and the Union's reliance upon Entry 52 and Article 253 cannot override the constitutional distribution of powers over forests, wildlife and tribal governance. Accordingly, the impugned approvals are unconstitutional and liable to be set aside.

III.A: MegaCorp Industries is Absolutely Liable for the Aranya Gram Deaths and Environmental Harm

It is respectfully submitted that MegaCorp Industries incurs absolute liability for the deaths, displacement and environmental harm caused by the HydroMine Nexus Project. The Project involved inherently hazardous activities, including large-scale mining and blasting operations

⁵⁶ Report of the U.N. Special Rapporteur on the Rights of Indigenous Peoples (Mission to Aurora, 2023), Annex. F.2.

within the Evergreen Rainforest Reserve. On 1 May 2024, MegaCorp's blasting operations triggered a landslide that buried one-third of Aranya Gram, killing 20 persons and displacing over 300 residents.⁵⁷

In *M.C. Mehta v. Union of India* (Oleum Gas Leak), this Hon'ble Court held that "an enterprise which is engaged in a hazardous or inherently dangerous industry, owes an absolute and non-delegable duty to the community to ensure that no harm results" and that if harm does occur, "the enterprise must be absolutely liable to compensate for such harm." The present case falls squarely within this principle, as the loss of life and displacement directly resulted from MegaCorp's hazardous operations⁵⁸.

In *Indian Council for Enviro-Legal Action v. Union of India*, this Hon'ble Court affirmed that where an activity is hazardous or inherently dangerous, the polluter is liable to make good the loss caused and must bear the cost of restoring the damaged environment⁵⁹. The consequences of the Project are evident: fish catches have declined by 80%, groundwater contains mercury levels at 4.2 times the WHO safe limit, and eleven children have developed neurological disorders consistent with methylmercury exposure.⁶⁰

The principles affirmed in *Vellore Citizens' Welfare Forum v. Union of India*⁶¹ and *M.C. Mehta v. Union of India* (Kanpur Tanneries)⁶² establish that the Polluter Pays Principle forms part of the law of the land. Consequently, MegaCorp's offer of INR 5 crores as *ex gratia* compensation cannot extinguish its legal liability.⁴

Accordingly, the Petitioners are entitled to compensation on the standard of absolute liability laid down in *M.C. Mehta*, including compensation for deaths and displacement, restoration of forest rights and sacred sites, medical treatment for affected children and the full cost of environmental remediation, all of which MegaCorp is bound to bear.

III.B: MegaCorp Global S.A. Can Be Held Liable Through Veil-Lifting and Direct Parent Responsibility

⁵⁷ Affidavit of Indigenous Tribal Leaders and FPIC Documentation, Annex. B, ¶¶ 11–13. BSOLS NATIONAL MOOT ANNEXURES.pdf

⁵⁸ *M.C. Mehta v. Union of India*, (1987) 1 S.C.C. 395.

⁵⁹ *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 S.C.C. 212.

⁶⁰ Affidavit of Indigenous Tribal Leaders and FPIC Documentation, Annex. B, ¶ 11. BSOLS NATIONAL MOOT ANNEXURES.pdf

⁶¹ *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 S.C.C. 647.

⁶² *M.C. Mehta v. Union of India*, (1988) 1 S.C.C. 471.

It is respectfully submitted that although *Salomon v. A. Salomon & Co.* established the principle of separate corporate personality, that protection is not absolute. Courts may lift the corporate veil where the corporate structure is used to evade legal obligations, perpetrate fraud or defeat public policy.⁶³

In *Life Insurance Corporation of India v. Escorts Ltd.*⁶⁴ and *State of U.P. v. Renuagar Power Co.*, this Hon'ble Court recognised that the corporate veil may be lifted where the subsidiary is, in substance, the alter ego or instrumentality of the parent company.⁶⁵ In the present case, MegaCorp Industries is merely the Aurora-incorporated subsidiary of MegaCorp Global S.A., while the parent company itself claims to be the real investor by invoking the Aurora–Zenith BIT and threatening international arbitration. Having asserted ownership and control for treaty protection, MegaCorp Global cannot simultaneously disclaim responsibility for the consequences of the Project.

Further, in *Vodafone International Holdings B.V. v. Union of India*, this Hon'ble Court recognised that the corporate veil may be lifted where the corporate form is abused or used to evade the law⁶⁶. Likewise, in *Vedanta Resources plc v. Lungowe*⁶⁷ and *Okpabi v. Royal Dutch Shell plc*, the Courts recognised that a parent company may owe a direct duty of care where it exercises substantial control over the operations, policies or safety standards of its subsidiary⁶⁸. This approach is consistent with the UN Guiding Principles on Business and Human Rights (Pillar II), recognised in Annexure D⁶⁹

Moreover, the Environmental Impact Assessment and consent process were tainted by fraud, including the fabricated Gram Sabha Resolution and the deceptive use of Traditional Ecological Knowledge. In *S.P. Chengalvaraya Naidu v. Jagannath*, this Hon'ble Court held that "a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eye of law" and that "fraud avoids all judicial acts, ecclesiastical or temporal." MegaCorp Global cannot invoke the corporate form to shield itself from liability arising from a project founded upon fraud.⁷⁰

Accordingly, MegaCorp Global S.A. cannot hide behind the separate legal personality of MegaCorp Industries. Whether through veil-lifting or the doctrine of direct parent-company

⁶³ *Salomon v. A. Salomon & Co.*, [1897] AC 22 (HL).

⁶⁴ *Life Ins. Corp. of India v. Escorts Ltd.*, (1986) 1 SCC 264;

⁶⁵ *State of U.P. v. Renuagar Power Co.*, (1988) 4 SCC 59.

⁶⁶ *Vodafone Int'l Holdings B.V. v. Union of India*, (2012) 6 SCC 613.

⁶⁷ *Vedanta Res. PLC v. Lungowe*, [2019] UKSC 20.

⁶⁸ *Okpabi v. Royal Dutch Shell PLC*, [2021] UKSC 3.

⁶⁹ Moot Proposition, Annexure D.

⁷⁰ *S.P. Chengalvaraya Naidu v. Jagannath*, (1994) 1 SCC 1.

responsibility, the controlling parent company is jointly liable for the harms caused by the HydroMine Nexus Project.

III.C: The BIT Does Not Bar Constitutional Relief and the Project Is Not Entitled to Treaty Protection

It is respectfully submitted that quashing the HydroMine Nexus Project would not constitute indirect expropriation under the Aurora–Zenith BIT. In *Methanex Corp. v. United States*⁷¹, *Saluka Investments BV v. Czech Republic*⁷² and *Chemtura Corp. v. Canada*, investment tribunals recognised that bona fide, non-discriminatory measures adopted for legitimate public welfare objectives do not amount to compensable expropriation.⁷³ This principle is expressly reflected in Article 5.4 of the BIT, which excludes environmental and public-health measures from the scope of indirect expropriation. The present Project seeks to protect the Evergreen Rainforest Reserve, the critically endangered Aurora Tiger and communities affected by mercury contamination and landslide deaths.⁷⁴

Further, in *Philip Morris Brands Sàrl v. Uruguay*, the Tribunal recognised the State's sovereign right to adopt good-faith measures for public health. Likewise, the compelling public interest in protecting human life, health and the environment fully justifies constitutional intervention in the present case.⁷⁵

MegaCorp also cannot invoke legitimate expectations. In *EDF (Services) Ltd. v. Romania*, the Tribunal held that investors cannot legitimately expect the legal framework to remain unchanged absent a specific assurance or stabilisation commitment. Having invested in a UNESCO World Heritage Site, a Ramsar Wetland and tribal forest lands, MegaCorp cannot claim immunity from environmental regulation or constitutional scrutiny.⁷⁶

Moreover, investments procured through fraud or serious illegality are not entitled to treaty protection. *World Duty Free v. Kenya*⁷⁷, *Inceysa v. El Salvador*⁷⁸ and *Plama v. Bulgaria* deny treaty protection to investments tainted by fraud or illegality⁷⁹. The present Project is founded upon

⁷¹ *Methanex Corp. v. United States*, Final Award (UNCITRAL 2005).

⁷² *Saluka Invs. BV v. Czech Republic*, Partial Award (UNCITRAL 2006);

⁷³ *Chemtura Corp. v. Canada*, Award (UNCITRAL 2010);

⁷⁴ Aurora–Zenith BIT art. 5.4

⁷⁵ *Philip Morris Brands Sàrl v. Uruguay*, ICSID Case No. ARB/10/7, Award (July 8, 2016).

⁷⁶ *EDF (Services) Ltd. v. Romania*, ICSID Case No. ARB/05/13, Award (Oct. 8, 2009).

⁷⁷ *World Duty Free Co. Ltd. v. Kenya*, ICSID Case No. ARB/00/7, Award (Oct. 4, 2006)

⁷⁸ *Inceysa Vallisoletana S.L. v. El Salvador*, ICSID Case No. ARB/03/26, Award (Aug. 2, 2006)

⁷⁹ *Plama Consortium Ltd. v. Bulgaria*, ICSID Case No. ARB/03/24, Award (Aug. 27, 2008).

a fabricated Gram Sabha Resolution, the misappropriation of Traditional Ecological Knowledge and a deficient EIA. Consequently, the legality requirement under Article 1.1 of the BIT is not satisfied.

Finally, Article 31(3)(c) of the Vienna Convention on the Law of Treaties requires treaties to be interpreted consistently with other applicable rules of international law. In *Urbaser S.A. v. Argentina*, the Tribunal recognised that human rights obligations may inform treaty interpretation. Accordingly, the Aurora–Zenith BIT must be interpreted consistently with Aurora's obligations under the CBD, Ramsar Convention, ILO Convention No. 169 and the Paris Agreement. The possibility of investment arbitration therefore cannot preclude this Hon'ble Court from granting constitutional relief under Article 32.⁸⁰

III.D: The Union's Actions Unconstitutionally Undermined Verdantia's Concurrent Powers Over Forests and Tribal Governance

It is respectfully submitted that the Union cannot justify the HydroMine Nexus Project by invoking Entry 52 or Article 253 while disregarding the constitutional role of the State of Verdantia and the statutory safeguards protecting forest-dwelling communities.

Forests and wildlife fall within Entries 17A and 17B of the Concurrent List, conferring legislative and administrative responsibility upon both the Union and the States.⁸¹ The approval process nevertheless proceeded despite the absence of valid Gram Sabha consent under the Forest Rights Act, 2006 and the exclusion of the Ministry of Tribal Affairs from the decision-making process.⁸² Further, in *S.R. Bommai v. Union of India*, this Hon'ble Court recognised federalism as part of the Constitution's basic structure. The Union cannot rely upon national development, treaty implementation or climate commitments to effectively nullify the State's concurrent powers over forests, wildlife and tribal welfare⁸³

The deliberate exclusion of institutions specifically entrusted with protecting tribal rights, coupled with reliance upon an unsupported national-security exemption, renders the approval process arbitrary and violative of Article 14.⁸⁴ Accordingly, the impugned approvals constitute a

⁸⁰ *Urbaser S.A. v. Argentina*, ICSID Case No. ARB/07/26, Award (Dec. 8, 2016).

⁸¹ INDIA CONST.

⁸² Forest Rights Act, 2006, § 4(5), Acts of Parliament, 2006.

⁸³ *S.R. Bommai v. Union of India*, (1994) 3 S.C.C. 1.

⁸⁴ INDIA CONST. art 14

constitutionally impermissible encroachment upon Verdantia's concurrent authority and are liable to be set aside.

Therefore, it is respectfully prayed that this Hon'ble Court hold MegaCorp Industries and MegaCorp Global S.A. liable for the harm caused by the HydroMine Nexus Project, declare that the Aurora–Zenith BIT does not bar constitutional relief, hold that the Union's actions are unconstitutional, and consequently quash the impugned approvals.

IV. Does the right to a clean, healthy, and sustainable environment under Article 21 - including the right of future generations - impose a constitutional duty on the State to ensure that infrastructure labelled 'green' actually delivers net climate benefit? And does the public trust doctrine require the State to maximise ecological benefit per unit of development, rather than merely passing an environmental clearance threshold?.

It is humbly submitted that the constitutional guarantee of a clean, healthy, and sustainable environment under Article 21 cannot be satisfied by merely designating a project as “green infrastructure”; rather, the Constitution requires that such a project deliver genuine and demonstrable environmental benefits. Furthermore, the public trust doctrine imposes upon the State a positive obligation to protect and preserve ecological resources for present and future generations. The present submission proceeds on four grounds: first, Article 21 imposes a substantive constitutional duty to ensure meaningful environmental protection and sustainability [4.1]; second, the Project fails to satisfy this constitutional standard owing to its net ecological harm [4.2]; and third, the public trust doctrine, read with the principle of intergenerational equity, prohibits State action that results in the irreversible depletion of ecological resources held in trust for future generations [4.3].

1V.1 Article 21 imposes a substantive constitutional duty to ensure meaningful environmental protection and sustainability.

It is well established that the right to life under Article 21 is not confined to mere animal existence⁸⁵; it encompasses the right to live with human dignity⁸⁶, which includes the right to the enjoyment of pollution-free water and air⁸⁷ and a wholesome, healthy environment⁸⁸. In *M.K.*

⁸⁵ *Kharak Singh vs The State Of U. P. & Others*, AIR 1963 SUPREME COURT 1295.

⁸⁶ *Olga Tellis & Ors vs Bombay Municipal Corporation & Ors.*, 1985 (3) SCC 545, *Charan Lal Sahu Etc. Etc vs Union Of India And Ors*, AIR 1990 SUPREME COURT 1480.

⁸⁷ *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598.

⁸⁸ *A.P. Pollution Control Board Ii vs Prof.M.V. Nayudu (Retd.)And Ors*, 2001 (2) SCC 62

*Ranjitsinh v. Union of India*⁸⁹, this Hon'ble Court recognised that the Constitution confers upon citizens a right against the adverse effects of climate change. Article 48-A of the Constitution directs that the State shall endeavour to protect and improve the environment and safeguard forests and wildlife. Article 51-A(g) imposes a corresponding fundamental duty upon citizens to protect and improve the natural environment. It is well established that Articles 21, 48-A and 51-A(g) impose upon the State a positive constitutional duty to protect and improve the environment⁹⁰. The State's obligation extends beyond avoiding environmental harm and requires it to take effective measures to preserve ecological integrity and secure the right to a healthy environment⁹¹. Accordingly, the State has a positive obligation to ensure that developmental projects preserve ecological integrity and contribute meaningfully to environmental protection.

IV.1.2 International obligations reinforce the constitutional standard

The Paris Agreement, 2015, the Convention on Biological Diversity, 1992, and the Ramsar Convention on Wetlands, 1971, collectively impose obligations of substantive environmental protection. Environmental protection is indispensable to the fulfilment of India's international obligations⁹². This Hon'ble Court has consistently recognised that domestic law must, where possible, be interpreted in harmony with international conventions, and that customary international law forms part of Indian law unless inconsistent with statute⁹³. Accordingly, the State cannot adopt an interpretation of its constitutional or environmental obligations that defeats the very international commitments it has undertaken to protect the environment

IV.1.3 Article 21 Prohibits Development That Compromises the Rights of Future Generations

Intergenerational equity and sustainable development are part of Article 21⁹⁴. Sustainability is meeting the needs of the present without compromising the ability of future generations to meet their own needs⁹⁵. Intergenerational equity requires that future generations inherit an environment that is no worse in quality than that enjoyed by the present generation and retain equitable access to the diversity of natural and cultural resources available today⁹⁶. The present generation has no

⁸⁹ *M.K. Ranjitsinh v. Union of India*, 2024 INSC 280.

⁹⁰ *Charan Lal Sahu Etc. Etc vs Union Of India And Ors*, 1989, AIR 1990 SUPREME COURT 1480.

⁹¹ *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 5 SCC 281.

⁹² *Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd*, (2008) 13 SCC 30.

⁹³ *Apparel Export Promotion Council v. A.K. Chopra*, (1999) 1 SCC 759.

⁹⁴ *Goa Foundation vs. Union of India (UOI) and Ors*. MANU/SC/0388/2014.

⁹⁵ *M.C. Mehta vs Union Of India & Ors*, (2004) 12 SCC 118.

⁹⁶ *Common Cause and Ors. vs. Union of India (UOI) and Ors*. MANU/SC/0930/2017.

right to deplete natural resources and leave nothing for those who follow; accordingly, sustainable development requires the State to assess and regulate resource extraction so that ecological wealth remains available in the years to come⁹⁷. Accordingly, the State's developmental choices must preserve, rather than exhaust, the ecological options available to future generations. A project that transfers irreversible environmental costs to posterity is incompatible with the guarantee of intergenerational equity under Article 21.

IV.2 The HydroMine Nexus Demonstrably Fails the protective and proactive Standard

It is humbly submitted that the report commissioned by the National Green Tribunal demonstrates that the HydroMine Nexus Project fails the constitutional standard on every material parameter. The report identifies severe habitat fragmentation threatening the survival of the Aurora Tiger, irreversible ecological harm to the ERR ecosystem, mercury contamination of river systems, and net greenhouse-gas emissions during Aurora's 2030 NDC period. A project that simultaneously undermines biodiversity, ecosystem integrity, and climate objectives cannot be characterised as constitutionally sustainable or legitimately classified as "green infrastructure."

IV.2.1 The HydroMine Nexus Fails the Precautionary Standard of Environmental Protection

The HydroMine Nexus, comprising large-scale rare earth mining and dam infrastructure, is an inherently polluting activity carrying substantial risks of ecological degradation⁹⁸. Consequently, the precautionary and polluter pays principles apply with full force and require preventive action wherever a credible risk of irreversible environmental harm exists⁹⁹. The NGT-commissioned report establishes a prima facie case of irreversible ecological loss. Accordingly, once such a threat is established, the burden shifts to the project proponent to demonstrate environmental safety¹⁰⁰. Further, in *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647¹⁰¹, this Hon'ble Court held that scientific uncertainty cannot justify postponing preventive measures where serious or irreversible environmental damage is threatened.

Accordingly, once a credible threat of environmental harm is established, the burden shifts to the project proponent to demonstrate environmental safety. Any residual scientific uncertainty cannot justify postponing preventive measures where there exists a risk of serious or irreversible

⁹⁷ *State of Himachal Pradesh and Ors. vs. Ganesh Wood Products and Ors.* MANU/SC/0038/1996.

⁹⁸ *Suo Motu Action in Illegal Mining for Excavation of Morrum vs. Union of India and Ors.*, MANU/GT/0156/2023.

⁹⁹ *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664.

¹⁰⁰ *A.P. Pollution Control Board case*, (1999) 2 SCC 718, *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 5 SCC 281.

¹⁰¹ *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647.

ecological damage. Environmental degradation being an urgent and existential threat¹⁰², the law requires immediate preventive action

IV.3 The Approval of the HydroMine Nexus Constitutes a Breach of the Public Trust Doctrine

It is humbly submitted that the public trust doctrine forms part of the law and imposes upon the State a fiduciary duty to preserve natural resources for the benefit of present and future generations¹⁰³. In *M.C. Mehta v. Kamal Nath*¹⁰⁴, this Hon'ble Court held that the State is merely a trustee of ecologically significant resources, has a legal duty to protect natural resources, and they are meant for public use. As reaffirmed in *Intellectuals Forum, Tirupathi v. State of Andhra Pradesh*¹⁰⁵, a mere assertion of development is not sufficient reason to cut down forests.

The Ecological Reserve of Rindova, a Ramsar-listed wetland, is held by the State in trust for the public. By permitting activities that threaten irreversible biodiversity loss, alter ecological functions, and degrade the integrity of the reserve, the State has failed to safeguard the trust property entrusted to its care. While development and environmental protection must be harmonised, neither can be pursued at the expense of the other¹⁰⁶. A project that destroys critical habitat and causes net environmental degradation cannot satisfy this standard. Accordingly, the approval of the HydroMine Nexus constitutes a breach of the State's obligations under the public trust doctrine.

*Therefore, it is humbly submitted that the HydroMine Nexus Project is incompatible with the constitutional guarantee of a clean, healthy, and sustainable environment under Article 21 and constitutes a breach of the State's obligations under the public trust doctrine. Accordingly, The Union of Aurora, NERA, and the State of Verdantia are constitutionally liable for authorising and enabling the resulting environmental degradation and associated harm*¹⁰⁷.

¹⁰²Obligations of States in Respect of Climate Change, Advisory Opinion, 2025 I.C.J. ¶ 1 (July 23, 2025).

¹⁰³ *Th Majra Singh V indian Oil Corporation* AIR 1999 J&K 81.

¹⁰⁴ *M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388.

¹⁰⁵ *Intellectuals Forum, Tirupathi v. State of Andhra Pradesh*, (2006) 3 SCC 549.

¹⁰⁶ *Essar Oil v. Halar Utkarsh Samiti*, (2004) 2 SCC 392, *Dahanu Taluka Environmental Protection Group and Ors. Vs. Bombay Suburban Electricity Supply Co. Ltd. & Ors.* (1991) 2 SCC 539.

¹⁰⁷ *Indian Council For Enviro-Legal Action ... vs Union Of India And Ors.*, 1996 (3) SCC 212.

PRAYER

WHEREFORE, in light of the facts, issues raised and arguments advanced, it is most respectfully prayed that this Hon'ble Supreme Court of the Republic of Aurora may be pleased to:

- A. Quash the Environmental Clearance granted to the HydroMine Nexus Project;
- B. Declare that the Project violates the constitutional and statutory rights of the affected indigenous communities;
- C. Hold the Respondents liable for the environmental harm and direct appropriate compensation and ecological restoration; and
- D. Pass such other order(s) as this Hon'ble Court may deem fit and proper in the interests of justice, equity, and good conscience.

AND FOR THIS ACT OF KINDNESS, THE PETITIONERS SHALL, AS IN DUTY BOUND, EVER PRAY.

All of which is humbly prayed

Sd/-

On Behalf of Petitioner