BM -10

BSOLS 1ST NATIONAL MOOT COURT COMPETITION

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* RESPONDENT

INDEX OF AUTHORITIES

I. CASES

Indian Cases

- Balwant Rai Saluja v. Air India Ltd., (2014) 9 SCC 407
- Divya Pharmacy v. Union of India, 2018 SCC OnLine Utt 609
- E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3
- Gramophone Co. of India Ltd. v. Birendra Bahadur Pandey, (1984) 2 SCC 534
- Gunwant Kaur v. Municipal Committee, Bhatinda, (1969) 3 SCC 769
- Hingir-Rampur Coal Co. v. State of Orissa, AIR 1961 SC 459
- Indian Council for Enviro-Legal Action v. Union of India, (1996) 3 SCC 212
- Intellectuals Forum, Tirupathi v. State of Andhra Pradesh, (2006) 3 SCC 549
- Jolly George Varghese v. Bank of Cochin, (1980) 2 SCC 360
- Life Insurance Corporation of India v. Escorts Ltd., (1986) 1 SCC 264
- M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388
- M.C. Mehta v. Union of India (Oleum Gas Leak), (1987) 1 SCC 395
- M.C. Mehta v. Union of India (Kanpur Tanneries), (1988) 1 SCC 471
- Maganbhai Ishwarbhai Patel v. Union of India, (1969) 3 SCC 400
- Maneka Gandhi v. Union of India, (1978) 1 SCC 248
- Modern Dental College & Research Centre v. State of Madhya Pradesh, (2016) 7 SCC 353
- M.K. Ranjitsinh v. Union of India, 2024 INSC 280
- Narmada Bachao Andolan v. Union of India, (2000) 10 SCC 664
- Olga Tellis v. Bombay Municipal Corporation, (1985) 3 SCC 545
- Orissa Mining Corporation Ltd. v. Ministry of Environment & Forests, (2013) 6 SCC 476
- Samatha v. State of Andhra Pradesh, (1997) 8 SCC 191

- S.P. Chengalvaraya Naidu v. Jagannath, (1994) 1 SCC 1
- S.R. Bommai v. Union of India, (1994) 3 SCC 1
- State of Orissa v. M.A. Tulloch & Co., AIR 1964 SC 1284
- State of U.P. v. Renusagar Power Co., (1988) 4 SCC 59
- Subhash Kumar v. State of Bihar, (1991) 1 SCC 598
- Vellore Citizens Welfare Forum v. Union of India, (1996) 5 SCC 647
- Virender Gaur v. State of Haryana, (1995) 2 SCC 577
- Vodafone International Holdings B.V. v. Union of India, (2012) 6 SCC 613

Foreign / International Cases

- Adams v. Cape Industries plc, [1990] Ch 433
- Chandler v. Cape plc, [2012] EWCA Civ 525
- Chemtura Corp. v. Canada (UNCITRAL, 2010)
- Compañía del Desarrollo de Santa Elena S.A. v. Costa Rica, ICSID Case No. ARB/96/1
- EDF (Services) Ltd. v. Romania, ICSID Case No. ARB/05/13
- Inceysa Vallisoletana S.L. v. El Salvador, ICSID Case No. ARB/03/26
- Metalclad Corp. v. Mexico, ICSID Case No. ARB(AF)/97/1
- Methanex Corp. v. United States (UNCITRAL, 2005)
- Okpabi v. Royal Dutch Shell plc, [2021] UKSC 3
- Philip Morris Brands Sàrl v. Uruguay, ICSID Case No. ARB/10/7
- Plama Consortium Ltd. v. Bulgaria, ICSID Case No. ARB/03/24
- Prest v. Petrodel Resources Ltd., [2013] UKSC 34
- Salomon v. A. Salomon & Co., [1897] AC 22
- Saluka Investments BV v. Czech Republic (UNCITRAL, 2006)
- Saramaka People v. Suriname, Inter-American Court of Human Rights (2007)
- Técnicas Medioambientales Tecmed S.A. v. Mexico, ICSID Case No. ARB(AF)/00/2

- Urbaser S.A. v. Argentina, ICSID Case No. ARB/07/26
- Vedanta Resources plc v. Lungowe, [2019] UKSC 20
- World Duty Free Co. Ltd. v. Kenya, ICSID Case No. ARB/00/7

II. STATUTES

- Biological Diversity Act, 2002
- Constitution of the Republic of Aurora
- Constitution of India
- Environment Impact Assessment Notification, 2006
- Forest (Conservation) Act, 1980
- Forest Rights Act, 2006
- Indian Evidence Act, 1872
- National Green Tribunal Act, 2010
-

III. INTERNATIONAL CONVENTIONS & TREATIES

- Aurora–Zenith Bilateral Investment Treaty
- Convention on Biological Diversity, 1992
- ILO Convention No. 169
- Nagoya Protocol, 2010
- Paris Agreement, 2015
- Ramsar Convention on Wetlands, 1971
- United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)
- Vienna Convention on the Law of Treaties, 1969

IV. REPORTS & OTHER AUTHORITIES

- Brundtland Commission, *Our Common Future* (1987)
- IUCN Red List Assessment (2023)

- National Green Tribunal Committee Report (Annexure C)
- Report of the UN Special Rapporteur on the Rights of Indigenous Peoples (Mission to Aurora, 2023)

STATEMENT OF JURISDICTION

The Respondents most respectfully submit before this Hon'ble Supreme Court of the Republic of Aurora that the present Writ Petition has been instituted under Article 32 of the Constitution of Aurora seeking enforcement of alleged Fundamental Rights guaranteed under Part III of the Constitution.

Article 32 empowers this Hon'ble Court to issue appropriate directions, orders and writs for the enforcement of Fundamental Rights. The Petitioners have invoked the extraordinary writ jurisdiction of this Hon'ble Court alleging violations of Articles 14, 19 and 21 arising out of the approval and implementation of the HydroMine Nexus Project.

Without prejudice to the maintainability of the Petition or the objections raised herein regarding the nature of the reliefs sought, the Respondents respectfully submit to the jurisdiction of this Hon'ble Court under Article 32 of the Constitution of Aurora.

STATEMENT OF FACTS

The Evergreen Rainforest Reserve

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. The Reserve is inhabited by the Woodfolk Clan, River Spirits Group and Hillcrest Peoples, whose community forest rights are recognised under the Forest Rights Act, 2006. Aurora is also a Party to the Convention on Biological Diversity, the Ramsar Convention, ILO Convention No. 169, the Nagoya Protocol and the Paris Agreement.

The HydroMine Nexus Project

Pursuant to its National Green Energy Initiative and climate commitments, the Union of Aurora conceived 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., an Aurora-incorporated subsidiary of MegaCorp Global S.A., and designated as a Tier-1 Priority Project. Aurora's Nationally Determined Contributions simultaneously identified the ERR as a protected carbon sink, giving rise to competing developmental and environmental objectives.

Environmental Approval Process

MegaCorp submitted an Environmental Impact Assessment prepared by GeoConsult Pvt. Ltd., following which the National Environment Regulatory Authority granted Environmental Clearance on 20 December 2022. During the approval process, concerns were subsequently raised regarding the adequacy of the Environmental Impact Assessment, the consultation process with indigenous communities and the diversion of forest land for the Project.

Consultation Process and Subsequent Developments

Consultation meetings were conducted with the affected communities, culminating in a Gram Sabha Resolution dated 14 June 2022. Subsequently, allegations were raised concerning the manner in which the consultation process was conducted, the validity of the recorded resolution, and the utilisation of Traditional Ecological Knowledge during the preparation of the Environmental Impact Assessment. Independent reports later questioned the adequacy of the consultation process and the environmental assessment undertaken for the Project.

Environmental Incident

On 1 May 2024, blasting operations undertaken during implementation of the Project allegedly triggered a landslide at Kalpavriksha Konda, resulting in the deaths of twenty persons, displacement of residents of Aranya Gram and allegations of environmental contamination affecting the surrounding region. Investigations and expert reports thereafter identified concerns relating to biodiversity, mercury contamination and long-term ecological impacts.

Present Petition

Aggrieved by the grant of Environmental Clearance, the alleged violations of constitutional and statutory safeguards, and the consequences arising from the implementation of the HydroMine Nexus Project, the Petitioners have approached this Hon'ble Court under Article 32 of the Constitution of Aurora seeking, inter alia, quashing of the Environmental Clearance, compensation, environmental restoration and other consequential 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 Aranya Gram deaths and environmental harm; whether MegaCorp Global S.A. can be held liable through veil-lifting and direct parent responsibility; whether the Aurora–Zenith Bilateral Investment Treaty 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 21including the rights of future generations-imposes a constitutional duty upon the State to ensure that infrastructure labelled as "green" actually delivers a net climate benefit, and whether the Public Trust Doctrine requires the State to maximise ecological benefit per unit of development rather than merely satisfying the environmental clearance threshold?

SUMMARY OF ARGUMENTS

Issue I

It is respectfully submitted that the Environmental Clearance granted to the HydroMine Nexus Project is valid and was issued by the competent statutory authority after due consideration of the Environmental Impact Assessment and other relevant materials. The Petitioners have failed to establish any illegality warranting judicial interference, and any procedural deficiencies, if found, are curable without setting aside the Project.

Issue II

It is respectfully submitted that the Respondents substantially complied with the applicable consultation requirements under domestic law. The challenge to the Gram Sabha Resolution raises disputed questions of fact unsuitable for adjudication under Article 32, while the alleged misuse of Traditional Ecological Knowledge and reliance on unincorporated international instruments do not furnish grounds to invalidate the Project.

Issue III

It is respectfully submitted that any liability arising from the Aranya Gram incident is confined to MegaCorp Industries and does not justify piercing the corporate veil, invalidating the Project, or imposing liability upon the parent company. The Union acted within its constitutional competence, and quashing the Project would expose Aurora to liability under the Aurora–Zenith BIT.

Issue IV

It is respectfully submitted that the HydroMine Nexus Project represents a legitimate exercise of sustainable development that balances environmental protection with national energy and climate objectives. The precautionary principle and the public trust doctrine do not require the Project to be quashed, and any deficiencies may be addressed through appropriate safeguards and remedial directions.

ARGUMENTS ADVANCED

I.A THE ENVIRONMENTAL CLEARANCE GRANTED BY NERA IS THE DECISION OF A SPECIALISED EXPERT BODY IN ACCORDANCE WITH THE LAW

I.A.1 The Governing Standard of Review

Section 3 of the Environment Protection Act, 1986 vests in the Central Government, the authority to 'take all such measures as it deems necessary or expedient for protecting and improving the quality of the environment.'[1] The National Environment Regulatory Authority exercises expert jurisdiction over environmental clearances. The applicable standard of judicial review is therefore not appellate substitution of judgment and even the *Wednesbury* standard interference is warranted only where the decision is patently arbitrary or made in excess of jurisdiction.[2]

In *Narmada Bachao Andolan v. Union of India* [3], this Court held that Courts should not usually examine the scientific correctness or technical merits of expert environmental impact assessments. It affirmed that development projects of national importance may be cleared in the overriding public interest, provided that environmental safeguards and mitigation measures are adopted. In *G. Sundarrajan v. Union of India*, [4] , this Court upheld clearance on the ground that when a policy decision has been taken by the Government, this Court does not go into the correctness of that decision unless the decision is clearly illegal or patently arbitrary. The expectation on the Court to resolve clear scientific disputes like GHG accounting methodology, seismic hazards, species statistics etc. is in contradiction of this settled position.

I.A.2 The Proponent-Commissioned EIA Is Lawful and the Review is Independent

Clause 7 of the EIA Notification, 2006 requires a proponent-submitted EIA for NERA's appraisal.[5] It does not mandate a government-commissioned EIA. Moreover, consideration of a conflict-of-interest argument, if accepted, would invalidate virtually every environmental clearance issued in

[1] Environment (Protection) Act, No. 29 of 1986, § 3, India Code (1986).
[2] *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948] 1 KB 223.
[3] *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664.
[4] *G. Sundarrajan v. Union of India*, (2013) 6 SCC 620,
[5] Environmental Impact Assessment Notification, S.O. 1533(E), Gazette of India, Extraordinary, Part II, § 3(ii) (Sept. 14, 2006), cl. 7 (India).

Aurora. The Terms of Reference were issued by NERA vide letter No. NERA/TOR/2021-456 dated 14 March 2021 and not by MegaCorp.[6] GeoConsult followed NERA's own Terms of Reference. If the Terms of Reference were inadequate, the challenge lies against NERA's scope, which is a distinct question antecedent to the clearance validity.

I.B PROCEDURAL DRAWBACKS DO NOT VITIATE THE EC

I.B.1 Inversion of Burden of Proof in the National Security Exemption

It is pleaded before this court that disregarding a "national security" exemption because no one can point to the law that creates it goes against the constitutional presumption of validity.[7] The foundational principle is that executive action by a competent authority is presumed valid until the challenger demonstrates a specific statutory prohibition.[8] Section 3, EPA 1986[9], read with Entry 52 (Mines)[10] and Entry 56 (Inter-State Rivers)[11] of the Union List, confers Union authority over the HydroMine Nexus. In *Akhil Bharatiya Upbhokta Congress v. State of M.P.* this Court held that procedural irregularities which do not go to the root of jurisdiction, will not vitiate administrative action where the substantive interests that the procedure was designed to protect have otherwise been addressed. [12] Here, three consultation sessions were held, Gram Sabha proceedings were conducted, and the EMP contains 1% revenue sharing for the Tribal Welfare Fund making the community participation interest substantively addressed.

I.B.2 The MoTA Omission Is a Procedural Irregularity but Its Substance Was Addressed

The Forest Rights Act, 2006 does not expressly require the concurrence of the Ministry of Tribal Affairs (MoTA) as a condition precedent to Environmental Clearance.[13] Instead, tribal interests are safeguarded through the Gram Sabha under Sections 4(2)(e) and 6(1) of the Act.[14] In the

[6] Annexure A, §A.1.
[7] *Charanjit Lal Chowdhury v. Union of India*, AIR 1951 SC 41.
[8] *State of A.P. v. McDowell & Co.*, (1996) 3 SCC 709.
[9] Environment (Protection) Act, No. 29 of 1986, § 3, India Code (1986).
[10] INDIA CONST. sched. VII, list I, entry 52.
[11] INDIA CONST. sched. VII, list I, entry 56.
[12] *Akhil Bharatiya Upbhokta Congress v. State of M.P.*, (2011) 5 SCC 29.
[13] The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, No. 2 of 2007, India Code (2007).
[14] Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, No. 2 of 2007, §§ 4(2)(e), 6, India Code (2007).

present case, the statutory consultation process culminated in the Gram Sabha Resolution dated 14 June 2022, which recorded unanimous consent to the project. The absence of MoTA from the review process did not result in any operational prejudice to the recognition or protection of substantive forest rights.[15] Moreover, the objectives underlying MoTA consultation were substantively addressed through the EIA's socio-economic assessment[16], the Rehabilitation and Resettlement framework under the LARR Act, 2013[17], and the INR 500 crore Compensatory Biodiversity Fund. Therefore, it is submitted the invalidating Environmental Clearance after substantial investments have already been made would only be detrimental. As recently reaffirmed by this Court in *CREDAI v. Vanashakti*[18], a rigid approach to environmental compliance that results in the paralysis of vital national infrastructure is contrary to the public interest. The Court held that sustainable development must account for the immense socioeconomic capital and public utility already sunk into a project.

I.C.THE PRECAUTIONARY PRINCIPLE IS SATISFIED THROUGH PROPORTIONATE, BINDING MITIGATION

The Precautionary Principle, as upheld in *Vellore Citizens Welfare Forum v. Union of India*, requires preventive measures where there is scientific uncertainty about serious harm. This principle cannot be misunderstood as a veto on development[19]. In *T.N. Godavarman Thirumulpad v. Union of India* this Court permitted regulated forest diversion even in matters of national ecological significance, subject to certain statutory conditions and compensatory measures.[20] The Environmental Management Plan contains seven binding mitigation commitments directly addressing each identified risk such as 1,000 hectares compensatory afforestation, real-time effluent monitoring at 12 discharge points with public data, 1% annual project revenue to the Tribal Welfare Fund etc.[21] GeoConsult has identified certain environmental risks but this does not make the approval invalid. Rather, it follows the approach approved by this Court in *Narmada Bachao*

[15] C.R. Bijoy, Forest Rights Struggle: The Making of the Law and the Decade After, 13 Law, Env't & Dev. J. 73 (2017).
[16] Annexure A, §A.4.
[17] The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, No. 30 of 2013, Chapters V–VI, Second Schedule & Third Schedule (India).
[18] *CREDAI v. Vanashakti* , 2025 SCC OnLine SC 2474.
[19] *Vellore Citizens Welfare Forum v. Union of India*, (1996) 5 SCC 647.
[20] *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267.
[21] Annexure A, §A.7.

Andolan, where a project may proceed subject to continuous monitoring and corrective measures as new information becomes available.[22]

Prof. Vega's report was commissioned post-clearance by the NGT as an advisory document. It is a foundational principle of administrative law, affirmed by this Court in *Moons Technologies Ltd. v. Union of India* [23], that the validity of a statutory functionary's order must be judged solely on the basis of the evidentiary record available at the time of its issuance. Prof. Vega's report [24], while commissioned by the NGT, was not placed before NERA, nor was it incorporated into the EIA appraisal process before the clearance was granted on 20 December 2022. It therefore does not form part of the evidentiary record on which NERA's decision rests, and cannot retroactively vitiate a clearance that was granted on the basis of the material actually before the EAC.[25] The findings of the report would apply, if anything, only to MegaCorp's compliance with Environment Management Plan conditions, not on the validity of the EC as of the date it was issued. In *G. Sundarrajan v. Union of India*, this Court refuses to upholds the weightage of the statutory regulatory body's assessment, holding that where a technical body has applied its expert judgment, courts will not substitute a contrary view unless the decision is patently arbitrary.[26]

I.D THE 'GREEN INFRASTRUCTURE' CHARACTERISATION IS SCIENTIFICALLY DEFENSIBLE

Prof. Vega's model projects net GHG emissions during Years 1-10 on a GWP-20 basis. Relying on this to contest that the project cannot be called 'green', is an argument that fails on three independent grounds.Firstly, the IPCC's Sixth Assessment Report does not mandate one particular lifecycle accounting methodology for Nationally Determined Contributions (NDCs).[27] Under Article 4.13 of the Paris Agreement, States retain administrative flexibility to structure their domestic environmental appraisal boundaries.[28] Here, GeoConsult conducted a construction-phase

[22] *Supra* 3.
[23] *Moons Technologies Ltd. v. Union of* India, (2019) 18 SCC 401.
[24] Annexure C.
[25] *Mohinder Singh Gill v. Chief Election Commissioner*, (1978) 1 SCC 405.
[26] *G. Sundarrajan v. Union of India*, (2013) 6 SCC 620.
[27] Intergovernmental Panel on Climate Change, *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Hoesung Lee & Debra Roberts eds., 2023).
[28] Paris Agreement art. 4(13), Dec. 12, 2015, T.I.A.S. No. 16-1104.

greenhouse gas assessment strictly in alignment with NERA's established terms of reference. Moreover, the UNFCCC Secretariat has not formally challenged Aurora's NDC hydropower classification as “clean energy”.[29] This Court is not the appropriate forum to resolve competing expert methodologies on GHG accounting.

Second, Prof. Vega's own analysis shows the 100-year net GHG balance is +255 Mt CO2e, which means that the project is a lifetime net saver.[30] The paradox exists only on a GWP-20 basis during Years 1-10. Characterising the project as a net polluter while ignoring its positive lifetime balance is a selective and misleading reading of the evidence before the Court.

Thirdly, HydroMine Nexus avoids millions of tons of emissions annually, driving Aurora toward its unconditional NDC target of 50% non-fossil electricity by 2030. MENR projections warn that blocking this project will cause Aurora to miss that international climate commitment by a critical 7-percentage-point shortfall[31]. Furthermore, the accompanying rare earth extraction is vital to our domestic EV targets, breaking Aurora’s dangerous dependence on a foreign supply chain that currently controls 92% of imports.[32]

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 DOES NOT VIOLATE THE CONSTITUTIONAL, STATUTORY OR INTERNATIONAL LAW RIGHTS OF THE AFFECTED INDIGENOUS COMMUNITIES.

It is respectfully submitted that the HydroMine Nexus Project was undertaken in substantial compliance with the constitutional and statutory framework governing consultation with indigenous communities. The Petitioners seek to invalidate an infrastructure project of national importance by relying upon disputed factual allegations, selective reliance on international instruments and alleged procedural irregularities that neither establish a violation of the

[29] Annexure H, §H.3.1.
[30] Annexure C, §C.5.
[31] Annexure H, §H.3.1.
[32] Annexure H, §H.3.2.

Constitution nor justify quashing the project. At the highest, the record discloses matters capable of remedial directions or compensatory measures, not grounds for invalidating the Environmental Clearance. The Respondents therefore submit that the challenge to the Project is liable to fail for the following reasons:

II.A. The Respondents Substantially Complied with the Requirement of Free, Prior and Informed Consultation

The Respondents submit that the applicable standard under ILO Convention No. 169 is meaningful consultation undertaken in good faith with the objective of reaching agreement, not an absolute community veto[33]. GeoConsult engaged with the affected communities through three consultation sessions held on 14 April, 22 May and 18 July 2022, which were conducted in the national language with local government interpreters, and the State subsequently obtained a Gram Sabha Resolution recording consent[34].Accordingly, the record demonstrates substantial compliance with the statutory consultation requirement. Further, official acts enjoy a presumption of regularity under Section 114(e) of the Indian Evidence Act, 1872[35], and the contemporaneous Gram Sabha Resolution dated 14 June 2022 cannot be displaced solely on the basis of affidavits sworn two years later without their contents being tested through cross-examination.[36]

Moreover, the present dispute must be assessed through the constitutional principle of sustainable development. In *Vellore Citizens' Welfare Forum v. Union of India*, this Hon'ble Court held that "The traditional concept that development and ecology are opposed to each other is no longer acceptable. 'Sustainable Development' is the answer[37]. The HydroMine Nexus Project was conceived as a Tier-I Project to advance Aurora's clean-energy commitments and strategic mineral security while incorporating rehabilitation, compensation and community welfare measures. Consistent with the approach adopted in *Narmada Bachao Andolan v. Union of India*, this Hon'ble Court should be slow to interfere with a major developmental project that has undergone statutory

[33] International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, arts. 6, 15.
[34] Moot Proposition, Annexure A, § A.4.2; Annexure B, ¶ 7.
[35] Indian Evidence Act, 1872,No.1 § 114, Acts of Parliament,1872.
[36] Moot Proposition, Annexure B, ¶ 7.
[37] *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647.

appraisal and expert evaluation, and should instead balance tribal interests with broader public objectives rather than treating the two as mutually exclusive[38].

II.B. The Validity of the Gram Sabha Resolution Cannot Be Determined in Writ Proceedings and, in Any Event, Does Not Warrant Quashing the Entire Project

The Petitioners' challenge to the validity of the Aranya Gram Resolution rests entirely upon contested factual allegations that cannot be conclusively determined in proceedings under Article 32. While the tribal affidavit alleges that only 14 members voted in favour, 17 dissented, and 31 remained silent, the official Gram Sabha minutes record unanimous consent. Likewise, allegations of inducement against the Headman are based solely on the statement of Elder Mangal Aranya regarding a private conversation, whereas no contemporaneous official record substantiates such claims.[39]

In *Gunwant Kaur v. Municipal Committee, Bhatinda*, the Supreme Court held that the High Court is not deprived of jurisdiction merely because questions of fact arise. However, where the petition raises questions of fact of a complex nature requiring oral evidence, the Court may decline to try the petition. [40]The present dispute falls squarely within that category. Determining whether consent was genuinely obtained, whether silence was treated as consent, whether inducements were offered to the Headman, and whether the recorded minutes accurately reflect the proceedings would necessarily require examination of witnesses, cross-examination of deponents, and assessment of competing evidence.

The affidavit relied upon by the Petitioners was sworn on 3 September 2024, after the dispute had arisen, whereas the Gram Sabha Resolution dated 14 June 2022 forms part of the contemporaneous official record and carries a presumption of regularity until proved otherwise[41]. Accordingly, this Hon'ble Court ought to exercise the discretion recognised in *Gunwant Kaur* and decline to adjudicate these disputed factual questions within writ proceedings.[42]

[38] *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664.
[39] Moot Proposition, Annexure B, ¶ 7., Annexure F.3.2.
[40] *Gunwant Kaur v. Municipal Committee, Bhatinda*, (1969) 3 SCC 769.
[41] Moot Proposition, Annexure B, ¶ 7.
[42] *Gunwant Kaur v. Municipal Committee, Bhatinda*, (1969) 3 SCC 769.

Further, even assuming *arguendo* that irregularities existed in the consultation process at Aranya Gram, the HydroMine Nexus Project affects three indigenous communities spread across 38 villages. The alleged defect pertains only to one Gram Sabha Resolution and cannot, by itself, invalidate the entire approval process.[43]The appropriate remedy, if this Hon'ble Court finds procedural deficiencies, would be a limited remand for a fresh FPIC exercise in the concerned village rather than wholesale quashing of the Project Clearance.

II.C. The HydroMine Nexus Project Does Not Violate Articles 14, 19 or 21 of the Constitution

Article 21 does not prohibit every deprivation of life, livelihood, or property-related interest. It only prohibits deprivation except according to a procedure established by law that is fair, just and reasonable. The HydroMine Nexus Project was undertaken pursuant to statutory processes under the environmental framework, including Environmental Clearance granted by NERA, preparation of an Environmental Impact Assessment, publication of an Environmental Management Plan, and provision of rehabilitation measures including land-for-land compensation under the LARR framework and a Tribal Welfare Fund funded through project revenues.[44]

The Respondents submit that the HydroMine Nexus Project satisfies the doctrine of proportionality recognised in *Modern Dental College v. State of M.P.* and affirmed in *K.S. Puttaswamy v. Union of India*.[45]First, the project pursues a legitimate State aim, namely Aurora's transition to clean energy and fulfilment of its NDC commitments[46]. Second, there exists a rational nexus between the project and that objective, as the HydroMine Nexus is designed to generate 2,000 MW of renewable energy while securing strategic rare-earth resources necessary for the clean-energy transition.[47] Third, the Petitioners have not demonstrated any equally effective but less restrictive alternative capable of achieving comparable energy and resource security. The project is further accompanied by mitigation measures, rehabilitation provisions, land-for-land compensation and a Tribal Welfare Fund.[1]

[43] Moot Proposition, Annexure A; Annexure B.
[44] Moot Proposition, Annexure A; Annexure C.
[45] *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353; *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.
[46] Moot Proposition, Annexure A; Annexure C.
[47] Moot Proposition, Annexure A.

Finally, the balance between rights infringement and public benefit weighs in favour of the project. While displacement and environmental impacts are undeniable, the constitutional benefits sought to be achieved-energy security, climate commitments and long-term public welfare-are substantial. As recognised in *Narmada Bachao Andolan v. Union of India*, courts should exercise restraint in matters involving complex developmental and technical policy choices. [48]Therefore, even if deficiencies are found in rehabilitation or implementation, the appropriate remedy is compensation, corrective directions and strict enforcement of safeguards, rather than quashing an entire nationally significant infrastructure project.

The Respondents do not deny that serious harm occurred after construction commenced. The landslide at Kalpavriksha Konda, the loss of life in Aranya Gram, and the allegations concerning mercury contamination warrant investigation, accountability, compensation, and corrective measures[49]. However, those subsequent events are distinct from the legality of the original project approval. The appropriate constitutional response is therefore targeted relief, including enhanced compensation, strict enforcement of environmental safeguards, monitoring obligations, and rehabilitation measures, rather than quashing an entire nationally significant infrastructure project.

Accordingly, the Petitioners have failed to establish that the project, viewed as a whole, is manifestly arbitrary under Article 14, imposes disproportionate restrictions under Article 19, or violates Article 21. At most, the record discloses implementation failures requiring remedial directions, not invalidation of the HydroMine Nexus Project itself.

II.D. The Alleged Use of Traditional Ecological Knowledge Does Not Vitiate the Environmental Clearance

The Respondents submit that even assuming, *arguendo*, that Traditional Ecological Knowledge was utilised without adequate consent, the appropriate remedy is benefit-sharing rather than invalidation of the entire project. The Nagoya Protocol and Aurora's biodiversity framework are

[48] *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664.
[49] Moot Proposition, Annexure B, ¶¶ 11–13; Annexure C.

designed to ensure Access and Benefit-Sharing (ABS), not to automatically nullify projects undertaken using such knowledge.[50]

The tribal communities allege that locations such as Kalpavriksha Konda, Naga Teerta and Bhumi Mata Maidan were identified through information shared during the 2019 survey; however, the EIA coordinates ultimately relied upon for project planning were generated through GeoConsult's independent surveys and technical assessments. Consequently, a direct causal link between the alleged misuse of TEK and the grant of Environmental Clearance has not been established[51].

Further, the Nagoya Protocol's benefit-sharing mechanisms are not fully self-executing in Aurora in the absence of specific implementing rules, making negotiated benefit-sharing agreements the appropriate corrective measure rather than project invalidation[52].Moreover, any defect relating to TEK is severable from the HydroMine Nexus Project as a whole. The allegation concerns the identification of mineral deposits and therefore attaches, if at all, to the mining component rather than the hydroelectric dam component. The project comprises distinct hydroelectric and mining operations, and a defect affecting one component cannot automatically invalidate the entire integrated project.[53]

Accordingly, the proportionate remedy would be to direct the execution of a benefit-sharing agreement with the affected communities and, if necessary, impose additional safeguards upon the mining operations, rather than quash a ₹38,500 crore nationally significant infrastructure project and expose Aurora to substantial investment treaty liability[54]

II.E. ILO Convention No. 169, UNDRIP and the Nagoya Protocol Do Not Create Directly Enforceable Rights in the Absence of Legislative Incorporation

[50] Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization arts. 5–7, 12; Convention on Biological Diversity art. 8(j); Biological Diversity Act, 2002, §§ 21, 36, 41.
[51] Moot Proposition, Annexure A; Annexure B, ¶¶ 8–10.
[52] Nagoya Protocol arts. 5–7, 12.
[53] Moot Proposition, Annexure A; Annexure C.
[54] Moot Proposition, Annexure A; Aurora–Zenith Bilateral Investment Treaty.

The Respondents submit that the Petitioners cannot seek direct enforcement of ILO Convention No. 169, the Nagoya Protocol, UNDRIP, or the communication of the UN Special Rapporteur in the absence of legislative incorporation.[55]

In *Jolly George Varghese v. Bank of Cochin*, the Supreme Court held that "the positive commitment of the State Parties ignites legislative action at home but does not automatically make the covenant an enforceable part of the corpus juris of India." [56]Likewise, in *Gramophone Co. v. Birendra Bahadur Pandey*, the Court recognised that national courts will respect international law unless it conflicts with municipal law, and conversely, where municipal law is clear, courts must apply municipal law.[57] Accordingly, the rights and obligations of the parties must be determined primarily through the Constitution and the Forest Rights Act, 2006, rather than through unincorporated treaty provisions.[58] While Aurora has ratified ILO Convention No. 169 and is a party to the Nagoya Protocol, the Petitioners have not identified any domestic provision incorporating these instruments in a manner that creates directly enforceable rights beyond those already recognised under municipal law.[59] Further, the Court ought to respect the constitutional separation of powers. The making of treaties and the manner of their implementation are matters entrusted to the Executive and Legislature. The judiciary cannot transform non-binding international instruments into enforceable domestic law merely because they are persuasive. This principle applies with greater force to the communication of the UN Special Rapporteur, which merely expressed concerns regarding the consultation process and does not constitute a binding legal determination[60]. Therefore, this Court should confine its inquiry to domestic law and refrain from granting relief based on unincorporated treaties or non-binding international instruments.

The Respondents therefore pray that this Hon'ble Court uphold the validity of the consultation process and the Environmental Clearance, or, in the alternative, if any procedural deficiencies are found, direct appropriate remedial measures without setting aside the Project or its approvals.

---

[55] ILO Convention No. 169; Nagoya Protocol; United Nations Declaration on the Rights of Indigenous Peoples; Moot Proposition, Annexure F.
[56] *Jolly George Varghese v. Bank of Cochin*, (1980) 2 SCC 360.
[57] *Gramophone Co. of India Ltd. v. Birendra Bahadur Pandey*, (1984) 2 SCC 534.
[58] The Forest Rights Act, 2006, No.2Acts of Parliament., 2006.
[59] *Jolly George Varghese v. Bank of Cochin*, (1980) 2 SCC 360; *Gramophone Co. of India Ltd. v. Birendra Bahadur Pandey*, (1984) 2 SCC 534.Moot Proposition, Annexure A; Annexure F.
[60] Moot Proposition, Annexure F.

ISSUE III: THE PETITIONERS ARE NOT ENTITLED TO THE RELIEFS SOUGHT AGAINST MEGACORP OR THE UNION IN RELATION TO CORPORATE LIABILITY, THE BIT OR THE CONSTITUTIONAL DISTRIBUTION OF LEGISLATIVE POWERS.

It is respectfully submitted that the Petitioners have failed to establish any ground warranting interference with the HydroMine Nexus Project on the basis of corporate liability, the Aurora–Zenith Bilateral Investment Treaty or the constitutional distribution of legislative powers. While the Respondents acknowledge that the project operator may be held accountable for any proven operational negligence, such liability neither justifies piercing the corporate veil nor invalidating the Environmental Clearance or the Project itself. Further, the Union acted within its constitutional competence, and any order setting aside the Project would expose Aurora to significant international treaty obligations without legal justification. The Respondents therefore submit that the challenge under the present Issue is liable to fail for the following reasons:

III-A. Any Liability Arising from the Aranya Gram Incident Is Confined to MegaCorp Industries and Does Not Invalidate the HydroMine Nexus Project.

The Respondents do not dispute that entities engaged in inherently hazardous activities may attract the doctrine of absolute liability as laid down in *M.C. Mehta v. Union of India*[61]. The record indicates that blasting operations undertaken as part of the HydroMine Nexus Project triggered the landslide at Kalpavriksha Konda, resulting in twenty deaths and the displacement of approximately three hundred persons. The CBI has also confirmed MegaCorp's culpability in relation to the incident.[62]Consequently, any civil liability arising from the accident may properly be imposed upon MegaCorp Industries Pvt. Ltd., the project operator incorporated in Aurora, which remains solvent, subject to Aurora's jurisdiction, and capable of satisfying compensation and remediation obligations.[63]

However, the existence of operator liability does not render the Environmental Clearance invalid, nor does it justify quashing the HydroMine Nexus Project itself. The legality of the project's approval and liability arising from subsequent operational failures are distinct questions. The

[61] *M.C. Mehta v. Union of India*, (1987) 1 SCC 395.
[62] Moot Proposition, Annexure C.
[63] Moot Proposition, Annexure A; Annexure C.

proper course is to ensure effective compensation, environmental remediation, and rehabilitation through the statutory framework and competent forums, including the National Green Tribunal[64].Further, the Cabinet's decision regarding criminal prosecution constitutes a separate executive action that may be independently challenged, but it does not affect the maintainability of civil claims founded upon absolute liability[65]. Since an adequate mechanism exists to award compensation and hold the operator accountable, there is no basis for converting the present compensation dispute into a challenge against the continued existence of the entire project.

III-B. MegaCorp Global S.A. Cannot Be Held Liable in the Absence of Any Recognised Ground for Piercing the Corporate Veil.

The Respondents submit that the corporate veil cannot be pierced merely because MegaCorp Industries is a subsidiary of MegaCorp Global S.A. In *Salomon v. A. Salomon & Co. Ltd.*, the House of Lords established that “The company is at law a different person altogether from the subscribers to the memorandum; and, though it may be that after incorporation the business is precisely the same as it was before the company is not in law the agent of the subscribers or trustee for them.” [66]This principle was reaffirmed in *Adams v. Cape Industries plc*, where the Court held that “The court is not free to disregard the principle of *Salomon v A Salomon & Co Ltd* merely because it considers that justice so requires.” [67]Accordingly, separate corporate personality remains the governing rule, and the mere fact that MegaCorp Global owns or controls MegaCorp Industries does not justify treating the two entities as one. The proposition itself identifies MegaCorp Industries as an Aurora-incorporated subsidiary operating the HydroMine Nexus Project, and it is this entity that undertook the relevant activities and remains amenable to Aurora's jurisdiction.[68]

Further, the present case does not satisfy the narrow circumstances in which veil-piercing is permissible. In *Prest v. Petrodel Resources Ltd.*, the UK Supreme Court held that “The corporate veil may be pierced only when a person is under an existing legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately

[64] National Green Tribunal Act, 2010; Moot Proposition, Annexure C.
[65] Moot Proposition, Annexure C.
[66] *Salomon v. A. Salomon & Co.*, [1897] AC 22 (HL).
[67] *Adams v. Cape Industries plc*, [1990] Ch 433 (CA).
[68] Moot Proposition, Annexure A.

frustrates by interposing a company under his control." The Court further observed that "if it is not necessary to pierce the corporate veil, it is not appropriate to do so." [69]Here, there is no allegation that MegaCorp Industries was created to evade an existing liability, nor is veil-piercing necessary because the operating company is solvent and capable of satisfying any compensation awarded under the doctrine of absolute liability.[5] The Indian position is equally restrictive. In *Balwant Rai Saluja v. Air India Ltd.*, the Supreme Court held that veil piercing should be applied "in a restrictive manner" and only where the company is a "mere camouflage or sham" created to avoid liability. The Court further recognised that ownership and control of a company are not sufficient grounds to disregard separate corporate personality[70]. Therefore, neither MegaCorp Global's shareholding in MegaCorp Industries nor its pursuit of rights under the BIT furnishes a legal basis for piercing the corporate veil and imposing direct liability upon the foreign parent company.

III-C. Invalidation of the HydroMine Nexus Project Would Expose Aurora to Liability Under the Aurora–Zenith Bilateral Investment Treaty.

The Respondents submit that invalidation of the HydroMine Nexus Project would place Aurora in breach of its obligations under the Aurora–Zenith BIT. Article 3.2 guarantees Fair and Equitable Treatment, which protects the legitimate expectations created by the host State's own conduct[71]. In *Tecmed v. Mexico*, the tribunal held that "The foreign investor expects the host State to act in a consistent manner, free from ambiguity and totally transparently in its relations with the foreign investor."[72] Here, Aurora granted Environmental Clearance, classified the HydroMine Nexus as a Tier-1 Priority Project, and encouraged investment in furtherance of its renewable-energy commitments.[73]Having induced investment on that basis, the State cannot subsequently destroy the economic value of the project through judicial or regulatory action without frustrating the legitimate expectations generated by its own organs.

Further, Article 5.3 of the BIT protects against indirect expropriation[74]. In *Metalclad v. Mexico*, the tribunal held that expropriation includes measures that deprive an investor of the use or

[69] *Prest v. Petrodel Resources Ltd.*, [2013] UKSC 34.
[70] *Balwant Rai Saluja v. Air India Ltd.*, (2014) 9 SCC 407.
[71] Aurora–Zenith Bilateral Investment Treaty, art. 3.2.
[72] *Tecnicas Medioambientales Tecmed S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award (May 29, 2003).
[73] Moot Proposition, Annexure A; Annexure C.
[74] Aurora–Zenith Bilateral Investment Treaty, art. 5.3.

reasonably expected economic benefit of its investment even without formal transfer of title[75].A complete halt to a ₹38,500 crore project after substantial investment and construction would constitute a substantial deprivation of the investment's economic value. Nor does the environmental purpose of such a measure eliminate the obligation to compensate. [76]In *Compania del Desarrollo de Santa Elena v. Costa Rica*, the tribunal held that "Expropriatory environmental measures-no matter how laudable and beneficial to society as a whole-are, in this respect, similar to any other expropriatory measures," and that "The purpose of the taking does not affect either the nature of the measure or the amount of compensation to be paid." [77]Consequently, even if the Court considers environmental protection or indigenous rights to be compelling objectives, those considerations do not extinguish Aurora's compensation obligations under the BIT.

Finally, the Republic of Zenith correctly relies upon Article 27 of the Vienna Convention on the Law of Treaties, which provides that "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty[78]."Accordingly, Aurora cannot rely upon a domestic constitutional judgment as a defence to BIT liability on the international plane. Moreover, MegaCorp Global qualifies as the protected investor under Article 1.2(b) of the BIT through its ownership and substantive business operations conducted through MegaCorp Industries, its Aurora subsidiary. [79]The Petitioners' allegation of treaty-shopping is therefore misplaced, and the denial-of-benefits provision is inapplicable since Zenith is the home State contemplated by the treaty itself. The appropriate course, therefore, is corrective regulation, compensation, and enhanced safeguards rather than invalidation of the entire project in a manner that would expose Aurora to substantial treaty liability.

III-D. The Union Acted Within Its Constitutional Competence Under Entry 54, Entry 56 and Article 253, and Did Not Unconstitutionally Encroach Upon Verdantia's Concurrent Powers.

The Respondents submit that the HydroMine Nexus Project falls predominantly within fields constitutionally assigned to the Union. In *State of Orissa v. M.A. Tulloch & Co.*, the Supreme

[75] *Metalclad Corp. v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award (Aug. 30, 2000).
[76] Moot Proposition, Annexure A; Annexure C.
[77] *Compañía del Desarrollo de Santa Elena S.A. v. Republic of Costa Rica*, ICSID Case No. ARB/96/1, Final Award (Feb. 17, 2000).
[78] Vienna Convention on the Law of Treaties, 1969, art. 27.
[79] Aurora–Zenith Bilateral Investment Treaty, art. 1.2(b); Moot Proposition, Annexure A.

Court held that "if a Central Act has been passed which contains the requisite declaration under Entry 54 and covers the field, the State Legislature has no jurisdiction to legislate in that field." [80].Similarly, in *Hingir-Rampur Coal Co. v. State of Orissa*, the Court held that "If Parliament by its law has declared that regulation and development of mines should in public interest be under the control of the Union, to the extent of such declaration the jurisdiction of the State Legislature is excluded."[81]The HydroMine Nexus involves large-scale rare-earth extraction, a matter squarely falling within the Union's regulatory domain over mines and minerals. Therefore, to the extent Parliament has occupied the field through legislation enacted pursuant to Entry 54, any competing State claim to exclusive control must yield. Further, the Verdant River forms part of the trans-boundary Aquaria river system, bringing the hydroelectric component within the Union's competence over inter-State rivers and river valleys.[82]

Additionally, Article 253 confers plenary power upon Parliament to legislate for implementing international obligations, even in areas otherwise falling within State competence[83]. In *Maganbhai Ishwarbhai Patel v. Union of India*, the Supreme Court held that "The effect of Article 253 is that if a treaty, agreement or convention with a foreign State deals with a subject within the competence of the States, Parliament alone has, notwithstanding Article 246(3), the power to make laws to implement the treaty, agreement or convention.[84]"Aurora's NDC commits the State to renewable energy expansion and long-term decarbonisation, and the HydroMine Nexus was specifically designated a Tier-1 Priority Project in furtherance of those commitments[85]. Applying the doctrine of pith and substance, the true nature of the project is mineral development and hydroelectric generation-subjects within Union competence. Any impact upon forests is merely incidental to those objectives and cannot invalidate an otherwise valid exercise of Union power. Consequently, by virtue of Article 246(1), Entry 54, Entry 56 and Article 253, the Union acted within its constitutional authority, and no unconstitutional encroachment upon Verdantia's powers has been established.

[80] *State of Orissa v. M.A. Tulloch & Co.*, AIR 1964 SC 1284.
[81] *Hingir-Rampur Coal Co. v. State of Orissa*, AIR 1961 SC 459.
[82] Moot Proposition, Annexure A.
[83] INDIA CONST. art 253.
[84] *Maganbhai Ishwarbhai Patel v. Union of India*, (1969) 3 SCC 400.
[85] Moot Proposition, Annexure A; Annexure C.

The Respondents therefore pray that this Hon'ble Court dismiss the present challenge under Issue III and uphold the validity of the Project, without prejudice to any compensation or remedial measures that may be granted against the project operator in accordance with law.

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?

The Respondents humbly submit that the HydroMine Nexus Project does not violate any constitutional principle or fundamental right guaranteed under the Constitution of Aurora. The Project is a strategically significant undertaking that generates 2,000 MW of renewable power, secures critical rare-earth minerals for Aurora's EV transition, and reduces reliance on fossil fuels.

IV.1 The Project Conforms to the Constitutional Mandate of Sustainable Development

It is humbly submitted that the HydroMine Nexus Project aligns with the constitutional vision of sustainable development by simultaneously promoting environmental protection, energy security, and long-term public welfare. Article 21[86] protects not merely the right to life, but the right to live with dignity in a healthy environment[87]. Read together with Article 48-A[88], which imposes a duty upon the State to protect and improve the environment and Article 39[89], the constitutional framework requires a balance between ecological preservation and developmental necessity. The Supreme Court in the case of Narmada Bacho Andolan vs Union of India held that[90] a mere change in the environment does not amount to a violation of Article 21, especially when efforts are taken

[86] INDIA CONST. art. 21.
[87] *Indian Council For Enviro-Legal Action ... vs Union Of India And Ors.,* (1996) 3 SCC 212, *Subhash Kumar v. State of Bihar* 1991 AIR 420
[88] INDIA CONST. art. 48-A.
[89] INDIA CONST. art. 39.
[90] *Narmada Bachao Andolan vs. Union of India (UOI) and Ors.,* (2000) 10 SCC 664.

to improve the environment. Further, the Hon'ble Court has recognised that the principle of sustainable development[91], forming an integral component of Article 21[92], imposes a duty upon the State to adopt a balancing approach that reconciles environmental protection with legitimate developmental objectives[93]. The Court observed that economic progress cannot be pursued at the expense of ecological integrity, but the necessity of preserving the ecology and environment should not hamper economic and other developments[94]. The HydroMine Nexus Project lawfully advances Aurora's clean-energy transition by generating 2,000 MW of renewable power, securing critical minerals, and balancing environmental protection with sustainable development.

IV.2 The Precautionary Principle and Reverse Burden of Proof Do Not Apply to the Present Case

In *A.P. Pollution Control Board v. Prof. M.V. Nayudu*,[95] the Supreme Court applied the precautionary principle and the reverse burden of proof in circumstances where the extent of environmental harm was uncertain and scientific knowledge remained incomplete. It is humbly submitted that these principles are intended for situations involving hazardous or inherently polluting activities whose consequences cannot be reasonably predicted[96]. Hydroelectric generation and regulated mineral extraction are recognised developmental activities governed by the principle of sustainable development[97]. The Constitution does not mandate the exclusion of all activities affecting the environment; rather, it requires a balance between ecological preservation and developmental imperatives in accordance with inter-generational equity[98]. Environmental resources are national assets whose utilisation must be regulated, not prohibited, so as to secure both present and future needs[99].

IV.3 The Project Advances Aurora's International Environmental Obligations

[91] Brutland Commission Report, 1983; Principle 2 of Stockhom Conference,1973; Principle 1 of Rio Declarartion,1992.
[92] *Goa Foundation vs. Union of India (UOI) and Ors.* MANU/SC/0388/2014
[93] *Intellectuals Forum, Tirupathi v. State of Andhra Pradesh and Ors* (2006) 3 SCC 549
[94] *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 5 SCC 281
[95] *A.P. Pollution Control Board v. Prof. M.V. Nayudu*
[96] *Narmada Bachao Andolan vs. Union of India (UOI) and Ors.,* (2000) 10 SCC 664.
[97] *Suo Motu Action in Illegal Mining for Excavation of Morrum vs. Union of India and Ors.,* MANU/GT/0156/2023
[98] *Essar Oil v. Halar Utkarsh Samiti*, (2004) 2 SCC 392.
[99] *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 5 SCC 281.

It is humbly submitted that the HydroMine Nexus Project is consistent with Aurora's international environmental obligations. Article 55 of the United Nations Charter promotes economic and social development through international cooperation[100], while the Paris Agreement recognises that climate action must be pursued within the framework of sustainable development and in light of States' developmental needs[101]. By facilitating renewable energy generation and securing critical minerals essential to the clean-energy transition, the HydroMine Nexus Project contributes to decarbonisation, advances Aurora's climate commitments, and promotes sustainable development. As international environmental law mandates sustainable, not abstentionist, development, infrastructure projects that reconcile economic growth with climate-mitigation objectives remain entirely consistent with contemporary international environmental obligations.

IV.4 Sustainable Development Necessitates the Continuation of Public Interest Projects Subject to Adequate Safeguards

It is humbly submitted that the HydroMine Nexus Project cannot be impugned merely because it entails some environmental impact[102]. The Hon'ble Supreme Court has consistently held that no development is possible without some ecological consequence and that projects serving significant public purposes cannot be abandoned on that basis alone[103]. The State's obligation is not to eliminate all environmental risk, but to ensure that adequate safeguards, mitigation measures, and regulatory oversight are in place[104]. The Project satisfies this threshold, having undergone environmental assessment and obtained the requisite statutory approvals. The Court has further recognised that where a project advances substantial public interests, limited environmental detriments and speculative apprehensions cannot outweigh broader developmental objectives[105]. The mere proximity of a project to an ecologically sensitive area does not render it unlawful where the competent authorities have duly considered and addressed environmental concerns[106].

[100] U.N. Charter art. 2, ¶ 4.
[101] Paris Agreement to the United Nations Framework Convention on Climate Change art. 2, Dec. 12, 2015, T.I.A.S. No. 16-1104.
[102] *K.M. Chinnappa, T.N. Godavarman ... vs Union Of India And Ors*, (2002) 10 SCC 606
[103] *G.Sundarrajan vs Union Of India & Ors,* 2013 (6) SCC 620
[104] *The State of Himachal Pradesh and Ors. vs. Yogendera Mohan Sengupta and Ors.,* MANU/SC/0032/2024.
[105] *G.Sundarrajan vs Union Of India & Ors,* (2013) 6 SCC 620.
[106] TOI News Desk, *SC on NGO's Opposition to Development Projects: 'How Will Country Progress?'*, THE TIMES OF INDIA (Apr. 1, 2025), https://timesofindia.indiatimes.com/india/sc-on-ngos-opposition-to-development-projects-how-will-country-progress/articleshow/119874009.cms.

Accordingly, the Project represents a constitutionally permissible balance between environmental protection and developmental necessity.

IV.5 The Public Trust Doctrine Requires a Balancing of Competing Interests, the Review of Which Is Subject to Limited Judicial Scrutiny

This Hon'ble Court has held that environmental consequences must be evaluated in relation to the project as a whole, including its broader developmental and ecological benefits[107]. Further, Once the competent authorities have considered environmental consequences, evaluated expert material, and adopted a reasoned policy choice, the Court ought not to act as a super-regulator [108]over technical and developmental decisions[109]. The court has held that, in practice, sustainable development involves complex synergies and trade-offs[110]. As this Hon'ble Court has recognised, industrial, energy, and infrastructure projects are indispensable to economic development, employment generation, and public welfare. Thus, sustainable development requires a balanced accommodation of environmental and developmental objectives, rather than absolute protection of the environment[111]. As recognised by this Hon'ble Court in *T.N. Godavarman Thirumalpad*, no development can occur without some impact upon the environment, nor can projects of substantial public utility be abandoned solely on account of such impacts. The public trust doctrine, which requires the public to be the beneficiary of resources, is also upheld[112]. In the present case, the Project advances renewable energy generation, supports the clean-energy transition and contributes to Aurora's climate objectives. Therefore, it is humbly submitted having satisfied the applicable regulatory and constitutional requirements, the Project represents a lawful balance between environmental protection and developmental necessity.

Therefore, it is humbly submitted that Article 21 and the Public Trust Doctrine require sustainable balancing rather than ecological maximisation, and the HydroMine Nexus Project satisfies this constitutional standard.

---

[107] N*armada Bachao Andolan vs Union Of India And Others,* (2000) 10 SCC 664.
[108] K.M. Chinnappa, T.N. Godavarman ... vs Union Of India And Ors, (2002) 10 SCC 606.
[109] *University of Mysore v. C. D. Govinda Rao*, AIR 1965 SC 491.
[110] *Bombay Dyeing & Mfg. Co. Ltd vs Bombay Environmental Action Group & Ors*, (2006) 3 SCC 434.
[111] *Tirupur Dyeing Factory Oweners Ass vs Noyyal River A.Protection Ass. & Ors*, AIR 2010 SUPREME COURT 3645
[112] M.C. Mehta vs Kamal Nath & Ors, AIRONLINE 1996 SC 711

PRAYER

WHEREFORE, in light of the facts, circumstances and submissions made hereinabove, it is most respectfully prayed that this Hon'ble Court may be pleased to:

a. Dismiss the present Writ Petition and uphold the validity of the Environmental Clearance granted to the HydroMine Nexus Project;

b. Hold that the Respondents have acted in accordance with the Constitution, the applicable statutory framework and the Republic of Aurora's international obligations;

c. Decline the Petitioners' prayer for quashing the HydroMine Nexus Project, piercing the corporate veil of MegaCorp Global S.A., or granting any relief inconsistent with the Aurora–Zenith Bilateral Investment Treaty;

d. In the alternative, if this Hon'ble Court finds any procedural or implementation deficiencies, issue appropriate remedial directions, including compensation, rehabilitation, environmental monitoring and enforcement of statutory safeguards, without invalidating the Project; and

e. Pass such other order(s) as this Hon'ble Court may deem fit and proper in the interest of justice, equity and good conscience.

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

All of which is humbly prayed

Sd/-

On Behalf of Respondent