



# 18<sup>TH</sup> ALL INDIA MOOT COURT COMPETITION FOR JUSTICE V R KRISHNA IYER EVER ROLLING TROPHY

## MOOT PROPOSITION

Nestled between azure waters and lush green landscapes, lies the coastal State of Eldoria of the Union of Maridiana. Maridiana boasts diverse landscapes, from the picturesque coastal regions of Eldoria to majestic mountain ranges and fertile plains. The nation prioritizes sustainable development, and its capital city, Auralis, serves as a hub for cultural exchange and economic activities. Maridiana's inhabitants thrive on innovation, and the cooperative spirit among its states exemplifies the country's commitment to progress and prosperity. Blessed with an abundance of natural resources, the State of Eldoria has thrived for generations on its coastal-related industries and plays a pivotal role in contributing to the GDP of the nation and its overall prosperity. Eldoria's natural features and resources as well as its marine-based raw materials also paves way to the export proceeds and revenue regime in the international trade of Maridiana, thus the state's contribution is processing to manufacturing. Eldoria is “Godzone” and is a travelers paradise. It attract tourists and is a major contributor in Maridiana's tourism sector. The state is the destination for leisure and business travelers and it generates additional revenue looming large over its economic horizon.

Due to the educational empowerment initiatives facilitated by the Eldorian government's policies, approximately 25% of the region's youth belonging to the minority religion, acquired professional and technical qualifications from recognized universities in the country.

For years, Eldoria had been dependent on neighboring States and other countries for sea transport facilities which caused delays and also resulted in soaring import costs for certain raw materials crucial to its coastal industries and for availing the export facilities even though the State was located in the international ship route. Faced with this economic bottleneck, the government of Eldoria, under the visionary leadership of Chief Minister Isabella Moreno, decided to have an international seaport within the state's borders.

Chief Minister Moreno and the cabinet unequivocally approved the initiative to construct an international seaport within the state's borders not only with the mission to streamline the import and export progression but also with the vision of strategic position of Eldoria as a key player in the regional maritime industry, as Eldoria's coastal region is vast and strategically positioned and it presented a feasible opportunity for such a venture. After a pilot study on maritime operations and environmental sustainability, the government, under the leadership of Chief Minister Isabella Moreno, through an executive order notified for the acquisition of lands



# 18<sup>TH</sup> ALL INDIA MOOT COURT COMPETITION FOR JUSTICE V R KRISHNA IYER EVER ROLLING TROPHY

near the proposed seaport site. The adverse impact over the aquatic biota and fishery resources and the resultant unemployment, a significant opposition arose from the local community, primarily from the part of individuals directly and indirectly in marine - related occupations. Recognizing the concerns, the Government engaged in negotiations with the natives for fostering cooperation and addressing the socio-economic impact of the project on the natives and finally agreed-upon a memorandum of understanding as part of the rehabilitation procedure and agreed for structural developments such as infrastructural development, educational hubs, employment preferences etc. and conferred all sorts of customary fishing rights to the local population.

However, unforeseen fiscal challenges from the central government intensified by a confluence of factors, together with the COVID-19 pandemic led to severe economic recession in the State. The costs associated with the construction, infrastructure development, and environmental considerations exceeded initial estimates, posing a challenge to the state's financial resources. With this unprecedented economic downturn, Chief Minister Moreno and her team recognized the need for adapting to the changed circumstances.

To ensure the continuity of the seaport project, the government decided to seek a strategic Public Private Partnership and the State Legislature of Eldoria enacted **The Seaport and Township Infrastructure Development Act 2022** hereinafter referred to as the STID Act 2022, to appoint an authority entrusting them with the planning, execution, and management of infrastructure projects, hereafter referred to as "Designated Infrastructure Projects."

The preamble of the Act read as ‘An Act to provide for planning, construction, regulation and operation of Eldoria Seaports and its administration, control and management and facilitating infrastructure development and for matters connected therewith or incidental thereto’

## **Section 5: Procedure of selecting the authority**

“State of Elodoria has exclusive power to appoint an authority through International bidding process, provided the authority must comply with the necessary requirements set forth in the “Seaport and Township Infrastructure Development Rules 2022”



# 18<sup>TH</sup> ALL INDIA MOOT COURT COMPETITION FOR JUSTICE V R KRISHNA IYER EVER ROLLING TROPHY

## Section 7: Powers of the Authority

- a. The authority has the power to decide the matters regarding construction, management and operation of seaport and matters incidental thereto;
- b) undertake, execute and perform such works and provide such services at or within the land acquired on such terms and conditions as it may deem necessary or expedient; and for other matters ancillary and incidental to.
- c) develop and provide infrastructure facilities such as roads, bridges, including setting up of new ports, jetties, navigational channels, dry ports and such other infrastructure in furtherance of the interest of the Port
- d) permit construction and development by itself or through any person, to make, erect, fix or remove within the port limits or Port approaches any wharf, dock, quay, stage, jetty, pier, building or structure, erection or mooring or undertake any reclamation of foreshore within the said limits and buildings and amenities required for the residence and welfare of the employees and natives of the area, subject to such limits, conditions and restrictions as it may deem necessary or expedient
- e) provide exemption or remission from payment of any rate or charge leviable on any goods or services under this Act;
- f) provide any other services or amenities in respect of vessels, passengers, goods or employees;
- g) undertake, execute and perform such works, activities and studies to promote maritime education, training skill development of coastal communities, seafarers welfare and Port related development; and
- h) make or construct or erect within the township such structures, buildings, drains, roads, fences, tube-wells, in-take wells, storage facilities, warehouses, pipelines, telephone lines, communication towers, electricity supply or transmission equipment and such other works and conveniences as authority thinks proper.
- i) to construct structured offices, supermarkets, schools, auditoriums as part of the township
- j) such other power as may be necessary for realization of the Seaport



# 18<sup>TH</sup> ALL INDIA MOOT COURT COMPETITION FOR JUSTICE V R KRISHNA IYER EVER ROLLING TROPHY

## Section 8: Power of Reclamation

The State has the right to reclaim and recoup the ownership and management of the seaport at any time after paying an adequate amount and such right is absolute. Powers conferred to the authority is subjected to this right.

After three rounds of unsuccessful biddings and tenders the Government of Eldoria finally succeeded in the fourth tender and awarded the project to the sole bidder, Harbor Dynamics International, a leading construction company renowned for its expertise in navigating challenging economic climates who compiled with the conditions and we're compatible with the state's vision. After intense negotiations, Government of Eldoria entered into a contract with Harbor Dynamics International (HDI) where the relinquishment was agreed on to reserving the Government power to take over the project once the financial situation become stable.

The main terms in the agreement can be read as follows:

State of Eldoria hereby agreed that Harbor Dynamic International is given the absolute authority to decide on matters regarding matters including incidental and ancillary in connection with the construction, management and operation of seaport including required length and depth of berth, required handling equipment, required number of access road lanes, required elevation of port facilities, required human resources, operation of vessels, passengers handling, cargo loading and handling, storage and warehousing facilities, development and maintenance of supporting infrastructure, environmental and security control etc.

State of Eldoria apart from providing the required land space will also ensure the availability of public utility services without incurring any financial liability.

State of Eldoria hereby agreed that Harbor Dynamic International can carryout the project at will without any interruption from the state or its agencies apart from legal and procedural compliances but will have to complete the commissioning of the Seaport before 1st January, 2028.

Harbor Dynamic International can withdraw from the project after giving six months' notice and after compensating the state for the harms and damages. The amount of compensation shall be decided in an arbitration proceeding.



## 18<sup>TH</sup> ALL INDIA MOOT COURT COMPETITION FOR JUSTICE V R KRISHNA IYER EVER ROLLING TROPHY

After the execution of the contract, the power was conferred to Harbor Dynamic International through an executive order and almost all the important terms in the contract were incorporated in the order. The Government of Eldoria acquired land for HDI under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013. To facilitate the construction, Eldoria's government provided essential infrastructure, including land and concessions in utilizing public utility services. In addition to the Government land which was transferred, the Government acquired and transferred on lease to HDI tenure land for which HDI has to pay actual cost of acquisition plus annual rent.

In exercise of the powers conferred through the statute, order and contract the Authority was issued license. Soon, HDI, hired cheap laborers from North eastern states of Maridiana, excluding of local people from employment. This exclusion of employment was deployed through a proposal which was accepted and approved and the proposal of exclusion are under the following grounds:

- a. when such exclusion aligns with strategic industry development goals.
- b. where the infusion of external expertise and advanced technologies is deemed essential for the progress of fisheries-related industries
- c. to attract external investments and enhance the economic viability of fisheries-related industries.

Regardless of hue and cry of the natives, HDI completed 50,000 sqft township in the proposed site in 12 months. They constructed structured offices, malls and two schools of International standards with exorbitant fee structure. A Convention Centre and floating Hotel with five-star facility was constructed to facilitate international business conclaves and to attract tourists. Roads and bridges were constructed in exclusion of National Highway Authority. Toll plazas were constructed and toll fee was imposed, even though the roads are under construction. For collection of toll HDI gave a subcontract to Paul and sons. The concessionaire began to collect toll from road users from 1/12/2023.

The unconventional construction also resulted in environmental degradation and destruction of normal navigation channels of the nearby harbors. Huge perennial deposition of sand brought by waves at the mouth and inside the channels makes it shallow, resulting in wave breaking inside the channel and at its entrance. When the channel becomes shallow, the height of waves naturally increases, making navigation of fishing vessels difficult. Seven fishermen lost their life within a span of four months near Savaria Harbor which is neighboring the seaport.



## 18<sup>TH</sup> ALL INDIA MOOT COURT COMPETITION FOR JUSTICE V R KRISHNA IYER EVER ROLLING TROPHY

At night on 7/12/2023, the natives under the leadership of Anderson Ribero, a youth wing activist barged into the local police station and 12 cops were taken as hostages. Public properties including police jeeps were vandalized. Anderson Ribero was arrested. The natives including women and children started hunger strike till the construction of Sea port is stopped. They alleged that activities of HDI causes serious damage to the environment in their region and placed their life, livelihood by fishing and health in jeopardy. The Chief Minister stated in press conference on 8/12/2023, that the construction of seaport is a policy decision and no disruptive activities will be entertained. However, the state shall take all feasible measures to protect the interest of local population.

Aggrieved by the stand of the state government, Aquarian Serenity, a prominent religious minority group in the region filed a writ petition before the Supreme Court of Maridiana. The petitioner contended that the failure to provide the promised preferential employment opportunities and fishing rights and other allied rights constituted a violation of right to equality, freedom of profession and right to life among others. It was also contended that the preferential employment opportunities were not merely a contractual matter but a commitment by the State under Article 12 and its instrumentality, the Harbor Dynamics is bound to uphold the fundamental rights namely Art.14, 19 and 21 of citizen.

“Save the Sons of Sea”, an NGO engaged in the protection of environment and fisheries right also filed a PIL before the Supreme Court of Maridiana against HDI alleging environment destruction and loss of life of fishermen. The Seaport and Township Infrastructure Development Act 2022 and corresponding agreement were challenged as being illegal and in violation of Part III of the Constitution. The Writ Petition and PIL are clubbed together and posted for hearing on 2 nd February 2024.

NB: The Constitution of Mardiana is in pari materia with the Constitution of India.