BEFORE THE LEARNED SOLE ARBITRATOR
Mr. Justice U.P. Singh
(Hon'ble Chief Justice of Kerala High Court, Retd.)

In the matter of :

Operation Research Group Pvt. Ltd. **….. Claimant.**

Versus

The Ranchi Municipal Corporation **…. Respondent.**

AWARD

1. The instant arbitration proceedings have commenced in pursuance of an order dated 17.02.2010 passed by the Hon'ble Chief Justice, Jharkhand High Court in Arbitration Application No.21 of 2008 whereby the court, with the consent of the counsel for the parties, has been pleased to appoint me to adjudicate the dispute in regard to the cancellation of contract between the parties as also consequences of the cancellation of the contract, if the same is held to be illegal by the Arbitrator.
2. After receiving the order of the High Court and after consultation with the learned counsels alongwith the parties it was decided that the sitting of the Tribunal would be held at Ranchi and other details were also worked out on 23.07.2010.
3. Subsequently the hearing of the case started affidavits were exchanged and issue were framed on 01.07.2011 where after the hearing of the matter commenced and was held on 29.08.2011, 30.08.2011, 26.09.2011, 27.09.2011, 19.11.2011, 29.11.2011, 15.12.2011 and 16.12.2011.
4. It is relevant to point out that an application under section 16 of the Arbitration and Conciliation Act. was filed by the Respondent and the matter was heard. However, as noted in the order dated 26.11.2010 the learned counsel for the Respondent did not press the application wherein he had questioned the

jurisdiction of this Arbitral Tribunal and in view of the said submission of the Respondents the said application did not survive whereafter the matter as stated earlier was heard on merits and the hearing of the case concluded on 16.12.2011. Counsel for the parties had requested and desired time till the end of the second week of January, 2012 to submit written arguments which was subsequently extended on request of the counsels for both sides till the end of February, 2012.)

5. The background of the case is that an agreement was entered into between the parties for preparation of DPR (Detailed Project Report), tender document including construction, supervision for drainage and sewage system in Ward Nos. (as on July 2003) 1 to 24 of Ranchi Municipal Area. The said agreement which was reduced in writing and termed as "Agreement for Techno-Commercial Consultancy Services" was executed on11th October, 2003. I will refer to the various clause and terms as incorporated in the agreement while discussing the case of the parties for the present since the dispute between the parties relate to the termination of the contract it would be necessary to quote clause 2.7 of the contract which deals with the termination of the contract and is quoted below :

> "2.7 Termination of Contract :
>
> In case due to any reason beyond the control of either party it is felt that the work cannot be continued any further, in that case with the mutual agreement of both the Client and the Consultant the Contract can be terminated. However it is the exclusive prerogative of the Client to accept or reject the termination Contract."
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> 2.7.1. It is clarified that the Consultant cannot at any point of time terminate the Contract without prior approval of the Client.
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> 2.7.2. Cessation of Rights and Obligations
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> Upon termination of this Contract pursuant to clause 2.7 hereof, or upon expiration of this Contract pursuant to clause 2.3 hereto, all rights and obligations of the parties hereunder shall cease, except (i) such

rights and obligations may have accrued on the date of expiration, (ii) the obligations of confidentiality set forth in clause 3.5 hereof, (iii) any right which a party may have under the applicable law.

Upon termination of this Contract pursuant to clause 2.7 hereof, the Client shall make the payments to the Consultant against the bills submitted and work already completed duly certified by the Client subject to L.D. Clause.

2.7.4. Dispute about Events of Termination

If either party disputes whether an event specified in clause 2.7 hereof has occurred such party may within forty five (45) days after receipts of notice of termination from the other party, refer the matter of settlement of dispute pursuant to clause hereof and this Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

6. That I have quoted the provision regarding the termination of the Contract since the dispute within the parties relates to the same and as to whether the aforesaid clause could be attractive in the facts and circumstances of the case. The order of termination of the contract is dated 17.06.2005 and the said order of termination was communicated to the claimant by letter of the Administrator, Ranchi Municipal Corporation bearing no.1315. The English translation of which is as follows :-

Office of the Ranchi Municipal Corporation Ranchi, “Letter No. 1315”

Date 17.06.2005

From

Administrator,

Ranchi Municipal Corporation, Ranchi

To

The Managing Director,

Operation Research Group Pvt. Ltd.

D-24, (Second Floor,) NDSE Part-1,

New Delhi-110049

Subject : **Regarding preparation of Sewage/Drainage Project and preparation of documents, Consultancy Services for Ranchi Municipal Corporation Area.**

Sir,

In connection with the aforesaid it is informed that the State Government vide its letter no.2/U.D./1387(B)/2001-1158 dated 15-06-2005 has directed the Ranchi Municipal Corporation that no work should be taken from your firm in relation to the Ranchi Municipal Corporation Area Sewage/Drainage Scheme consultation services and preparation and the agreement between Ranchi Municipal Corporation and your firm be cancelled.

In view of the aforesaid direction of the government the agreement between your firm and Ranchi Municipal Corporation dated 11.10.2003 is cancelled. If any amount is due to you as Consultation Charges then the last claim in relation to the same should positively be sent to the Corporation Office by 27.06.2005.

Yours Sincerey,
Sd/- 17.06.2005
(Administrator)
Ranchi Municipal Corporation, Ranchi

The aforesaid letter has been marked as Annexure-3 to the statement of facts and claims submitted by the claimant.

7. In the reply on behalf of the Ranchi Municipal Corporation to the statement of facts and claims application filed by the claimant Operation Research Group Pvt. Ltd. the defendents have filed the letter of the Government dated 15-06-2005 bearing no.1158 as Annexure-I. The said letter which is addressed to the Administrator, Ranchi Municipal Corporation by the Additional Secretary,

Urban Development Department, Ranchi it has been mentioned that as per instructions it is informed that for the purpose of comprehensive sewage/drained system in the Ranchi Municipal Corporation area M/s. ORES (Claimant) and M/s. Span Triverse Morgan had been chosen as Consultants for Ward Nos. 1 to 24 and 25 to 37 respectively for which agreement had been entered into with the Consultants on 11.10.2003.

8. On 02.06.05 the Hon'ble Departmental Minister while presiding over a meeting had reviewed the scheme and found that the reports for the schemes had not been submitted on time by both the Consultants which had to be done within a specified time period and has hence the aims of the Government were not being fulfilled due to the delays rather time and again extension of time was being sought. In such circumstance since the works were also not found up to the mark the Government had decided that in future no work be taken from these Consultants and they be paid their dues till the stage that they had worked.

9. It was further stated that no additional payment be made to the Consultants at their level and if any claim for the same was made the same be referred to the Government for decision. Further stating that since the agreement had been made with the Consultants at the level of the Corporation as such it should be lawfully cancelled by the Corporation at its level immediately.

10. It may be relevant to note that the claimant had initially challenged the order of termination of the their agreement by the Municipal Corporation by way of a Writ Application preferred before the Hon'ble Jharkhand High Court which had been registered as W.P. (C) No.582 of 2007. A Single Judge of the Hon'ble High Court vide order dated 02.05.2007. A Single Judge of the Hon'ble High Court vide order dated 02.05.2007 had dismissed the Writ Application mainly on the ground the Clause 2.7 of the Agreement provided for termination of the Contract and Clause 8.1 provided that any dispute between the parties arising pursuant to the contract, it not settled amicably, will be decided by arbitration under the provision of the Arbitration and Conciliation Act, 1996. He further observed

while dismissing the application as stated earlier that in view of the fact that the contract is a concluded one and it provides effective alternative remedy for settlement/resolving of the dispute between the parties, the Court was not inclined to interfere with the impugned order, which the petitioner had sought to challenge in writ jurisdiction of the court after a delay of about two years.

11. The claimant thereafter preferred a Letters Patent Appeal before the same Court which was registered a L.P.A No.226 of 2007 in which while noticing the contention of the counsel of the appellant who had urged and assailed the impugned judgment on the ground, interalia, that neither there is any forum provided for arbitration interms of clause 2.7.4, nor the agreement was terminated in terms of clause 2.7, while further noticing the contention of the learned counsel for the Respondents that the work had been allotted to another agency and the same was completed much before filing of the writ petition, while quoting the order of the writ court dated 02.05.2007, while holding that no relief could be granted in exercise of the writ jurisdiction and there was no reason to interfere with the impugned judgment passed by the Learned Single Judge. However, observed that the dismissal of the Writ Petition and the Appeal will not come in way of the petitioner to sue Respondent No.4 and 5 for damages on the allegation that the termination of agreement was illegal. The aforesaid order was passed on 07.07.2008. Both the orders of the Writ Court and that of the Appellate Court have been annexed as Annexure-B & D to the application under section 16 of the Arbitration and Conciliation Act. filed by the Respondent.

12. As stated earlier the claimant thereafter preferred an Arbitration Application before the High Court leading to the passing of the order appointing me as Sole Arbitrator to decide the dispute between the parties which order was passed with the consent of both the parties.

13. During the course of extensive submissions made by both parties before me the provisions of Clause 2.7 were discussed at length. Clause 2.7 of the agreement

which relates to termination of Contract speaks that in case due to any reason beyond the control of either party it is felt that the work cannot be continued any further, in that case with the mutual agreement of both the client and the consultant the contract can be terminated. However, it is the exclusive prerogative of the client to accept or reject the termination of the contract. Clause 2.7.1 further clarifies that the Consultant cannot at any point of time terminate the contract without prior approval of the client. It has been the contention of the claimant that the termination in question has not been done as per the conditions of the aforesaid Clause since it is not the case of either of the parties that it was beyond their control that the work could not be continued any further nor was there any mutual agreement between them to terminate the contract. It has been contended by the claimant that the termination order in question has not been based on clause 2.7 rather it has been done on the directions of the State Government which cannot be said to be a reason for termination of the contract more so the consultant never agreed or had any sort of mutual agreement with the client to terminated the agreement. Rather to the contrary the work done by it and the reports submitted by it had been duly accepted by the client i.e. the Ranchi Municipal Corporation and just prior to the termination it had also submitted revised report for 10 wards which had also been duly accepted by the client for which it had also raised a bill, which was pending. On the other hand, the Respondents contended that through it was correct that the order of termination was passed on the directions of the State Government and not by the Municipal Corporation itself, they have tried to justify the same stating that they were bound by the orders of the Government which has been described and defined in clause 1.1(g) of the agreement, mainly on the ground that the fund received for the work in question had been allotted by the State Government and as hence that State Government had a right to order for cancellation of the agreement since the Corporation functions under the control of the State. In support of its contention Mr. Rajesh Lal, Learned

Counsel for the Respondent Corporation has referred to certain sections of the Patna Municipal Corporation Act. which is said to have been adopted by the State of Jharkhand and which fact have no been disputed by the claimant. Sh. Lal has in particular laid great emphasis on section 529 of the Ranchi Municipal Corporation Act. which is the power of the State Government to suspend or prohibit any resolution or order.

529. Power of State Government to suspend any resolution or order. – (1) if the State Government is of opinion that execution of any resolution or order of the Corporation or of any other authority or officer subordinate thereto, or the doing of any act which is about to be done or is being done by or on behalf of the Corporation is not in conformity with law or the rules of bye-law made annoyance to the public or to any class or body of person or is likely to cause waste or damage to the municipal fund, the State Government may, by order in wiring suspend the execution of such resolution or order or prohibit the dong of any such act.

(2) A copy of such order of the State Government shall there upon be sent to the Corporation by the State Government.

(3) On receipt of a copy of the order as aforesaid, the Corporation may, if it is of opinion that the resolution, order or act is not in contravention or excess of the powers conferred by any law for the time being in force, or the execution of the resolution or the doing of the act is not likely to cause waste of or damage to the municipal fund, make a representation to the State Government against the said order and the State Government may, after considering the said representation either cancel, modify or confirm the order passed by it under sub-section (1) or take such other action in respect of the matter as may in the opinion of the State Government be just or expedient, have regard to all the circumstances of the case. He has further referred to Section 123B of the said Act. which deals with grant-in-aid to the corporation from the consolidated fund while further referring to Sections 117 and 120 of

the Act. to show that the audit and Accounts of the Corporation have to be done and transmitted to the State Government and auditing of municipal accounts, while further contending that the Chief Executive Officer (Administrator) and Deputy Chief Executive Officer of the Corporation are also appointees of the State Government. Learned Counsel for the claimants on the other hand stated that the Ranchi Municipal Corporation was an autonomous body created under the statue being a Statutory Body and further referred to the definition of client as mentioned in Clause 1.1(b) of the agreement which states that client means the Ranchi Municipal Corporation represented by the Administrator/CEO, RMC, Government of Jharkhand. Further stating that even as per the Ranchi Municipal Corporation Act. the Corporation had the power to enter into a contract as per section 68 and 69 of the same. He further contended that the entire agreement does not speak about the control of the Government or the power of the Government to terminate the contract/agreement and that the only provision for termination of the contract is as has been laid down in Clause 2.7 of the Agreement which is not attracted in the facts and circumstances of the instant dispute. He has further contended that section 529 of the Act is also not attracted since there is no whisper as to which act, resolution or order of the Municipal Corporation is not in conformity with law or the rule or bye-laws made there under or is likely to lead to a breach of the peace or to cause injury or annoyance to the public or to any class or body of persons or is likely to cause waste damage to the municipal fund of as to attract the aid Section. Since there is admittedly no allegation that the Act. of entering into the agreement is not in conformity with any law, rule or regulation which would not be in public interest. Learned counsel for the Respondent could not refute the submissions of the claimant and conceded that the termination of contract could be made only in accordance with the provisions of clause 2.7 of the Agreement while contending that the same was in fact made in accordance with the said 2.7 Learned Counsel for the Respondent Corporation could however not show any document or resolution of the Corporation stating or holding any reason that the work could not be continued any further for any reason beyond the control of either party. On the submissions of Mr. Delip Jerath, Learned Counsel for the claimant, that in fact not even a notice had been issued to show cause as to why the contract be not terminated, leave along any mutual termination of the contract. His reply again was that the same had been terminated on the directions of the State Government. In the circumstances I have no option but to hold that the contract/agreement has not been terminated in accordance with clause 2.7 of the Agreement. The next submission of the learned counsel for the Respondent Corporation is that the arbitration is not maintainable since the same is not in accordance with clause 2.7.4 of the Agreement since the reference to arbitration have not been made within a period of 45 days from the date of the termination or notice of termination is also not tenable since admittedly in the instant dispute no notice of termination has been severed by either party. Rather to the contrary the order of termination of the agreement dated 17.06.2005 has been made solely on the directions of the State Government.

14. Further, clause 8 of the Agreement states that the parties shall made best efforts to settle the dispute amicably, which the claimant states that it pursued with the Respondent and in fact it was on account of their efforts for amicable settlement, for which they even approached the State Government, since as per the Municipal Corporation the termination was made on the instructions of the State Government alone. The mater was admittedly thereafter even referred to a Committee of the Assembly presided over by Sh. Saryu Rai, MLA having Sh. Pradeep Yadav and Sh. Sukhde Bhagat, both MLAs as is Members apart from official of the Assembly which submitted us report on 10.01.2007 and it was only after all efforts for an amicable settlement had failed did the claimants move the Jharkhand High Court for relief vide W.P.

(C) No.582 of 2007 in which orders were passed on 02.05.2007 allowed by the orders of the Appellate Court dated 07.07.2008 as mentioned above. Since it was all along the contentions of the claimants that the termination had not been made in accordance with clause 2.7 of the Agreement. It had been further contended by Sh. Jerath learned counsel for the claimants that the Corporation could not raise the point about jurisdiction of this Arbitral Tribunal to decide the issue since the order appointing this Tribunal had been passed with consent of both the parties and more so since the Respondents had themselves preferred not to press their application relating to the jurisdiction of the Arbitrator made under Section 16 of the Act. which had already been recorded in order dated 26.11.2010 passed in the instant proceedings. The issue which is to be decided now is whether the cancellation of contract between the parties is valid and for a just cause.

15. Mr. Rajesh Lala, learned counsel for the Respondents has contended that time was the essence of the contract and delay had been made by the Consultant in submitting the reports which had not been done as per the schedule as laid down in the Agreement. In support of his contention Mr. Lala submitted that in the minutes of the meeting held under the Chairmanship of Deputy Commissioner of Ranchi who had been appointed as Chairman of the Committee to take decisions in relation to the reports submitted by the Consultants by order of the Government dated 22.01.2004 (Annexure-D to the reply of the Corporation to the statements of facts and claims of the claimant, hereinafter referred to as "the Reply"). It has been directed that the Consultant would submit the preliminary project report by 23rd February, 2005. The said meeting was aid to have been held on 03.01.2005 (Annexure-F to the Reply) which period was thereafter extended to 31st March, 2005 and subsequently by a further period of one week vide order dated 15.04.2005 (Annexure-G & H to the Reply). To this, learned counsel for the claimant stated that the reports in question had in fact been submitted and accepted by

the client, which revised report had been in fact submitted before the issuance of letter dated 15.04.2005 (Annexure-H). In support of his contention learned counsel referred to a letter dated 02.07.05 under the signature of the Deputy Administrator, Ranchi Municipal Corporation addressed to the Additional Secretary, Urban Development Department, Government of Jharkhand, Ranchi (Annexure-4, to the statements of facts and claims) which had been issued after the cancellation of the agreement which was done on 17.06.2005. In this letter it was mentioned that the Government had formed a Committee under the Chairmanship of the Deputy Commissioner, Ranchi to take decision on the reports submitted by the Consultant stating that the inception report submitted by the Consultant, ORG had been accepted by the Government for which it had been paid a sum of R.76.06 lakhs. Further stating that all report were submitted to the Members of the Committee of the Government as also the Government one day prior to the meeting in which the decisions were taken and that further copies of the Minutes of the Meeting for each and every meeting held had also been regularly sent to the Government, which had once again been done alongwith covering letter dated 03.02.2005. It was further mentioned in the said letter that it was not the duty of the Corporation to assess the cost involved for the project since it was for that purpose that the Consultant had been appointed and the work allotted to it. The Consultant had been submitting its reports regularly which were being reviewed by the Committee and as such it was not correct to say that the Consultant was time and again for its benefits increasing costs which were being paid by the Corporation. Copies of the proceedings of all meetings were being regularly forwarded to the government. Further the Department had also been making monthly assessment of the progress and on no occasion had the Government even raised any objection to the same or issued any directions and as such it was clear that the Corporation had been following all parameters and was not at fault Mr. Jerath for the claimant has further referred to another letter which is dated 22.10.2005 and annexed as Annexure-10 to the replication of the claimant, which letter though initially denied by the Corporation has been subsequently accepted by it. In the aforesaid letter once again addressed by the Deputy Administrator of the Corporation to the Additional Secretary, Urban Development Department of the Government it has been mentioned that the PPR (Preliminary Project Report) submitted by the claimant has been accepted by the Committee appointed by the State Government of which the Deputy Commissioner Ranchi had been appointed as the Chairman and that payment to the Consultant should be made till that state, while giving details of the accounts of the Consultant which are as follows :

"On submission of inception report 48,04,350.00 payment made 45,64,132 a sum of Rs.2,40,218 having been withheld as 5% security deposit deduction on pro-rata basis for each phase of work which I may call retention money being 6% of the fee payable to the Consultant the total payable to the Consultant being 2.5% of the total Project Cost. On acceptance of the inception repot a further invoice of Rs.32,02,900.00 was raised by the consultant to which an amount of Rs.30,42,755 was paid after deducting a sum of Rs.1,60,145.00 as retention money. Thereafter on submission of PPR a sum of Rs.38,01,825.00 became due being 9% of the fee payable to the Consultant and a sum of Rs.25,34,550.0 became due on approval of the PPR for Zone-III. The last two amounts i.e. of Rs.38,01,825.00 and a sum of Rs.25,34,550.00 i.e. on submission and approval of PPR for Zone-III were said to have been not paid to the Consultant by the Corporation. In the said letter it was stated that the cost for the Scheme relating to Zone-III was 168.97 Crores 25% of the same being Consultant's fee would amount to Rs.422.425 lakhs and as hence the amount payable to the Consultant on acceptance of the PPR for the state being 25% of 2.5% calculated at (6%+4%+9%+6%) which equal to 4,22,425 lakhs and 25% of the same being

1,05,60,625 and after deducting the sum of Rs.76,06,887 already paid to the Consultant would amount to Rs.29,53,738 to which if the retention money of 2,40,218.00 and 1,60,145.00 would be added the amount payable to the Consultant would be 33,54,101.00 rupees out of which income tax would have to be deducted.

That is the amount which as per the Respondent Corporation would be payable to the Consultant as per Annexure-10 to the Replication.

16. Mr. Jerath, learned counsel for the Claimant however contended that the sum of Rs.38,01,825.00 as mentioned in the aforesaid letter dated 22.10.2005 is not correct since in the said letter it is only the submission of PPR for Zone-III which consists of ten Wards has been noted or taken into account, which is not correct since the PPR had been submitted for the total Project Area i.e. of 24 wards. The fee payable for the same being Rs.69,50,000.00. He has stated that though it was the prerogative to accept the report submitted to the Corporation only after asking for revised project reports as per their need which would be acceptance of the PPR for which payment of 6& is to be made. However, for submission of the PPR 9% is the amount of fee which has to be paid. He has drawn distinction between submission and acceptance. The difference in the amount claimed and paid as per him is because the Respondent Corporation has calculated 9% of fee payable for submission of PPR for only 10 Wards of Zone-III whereas the Consultant had in fact submitted PPR for the entire project area and which amount would be 69,50,000 rupees and on submission of the report for the entire area the said fee automatically became due, since it was not outside the terms of the contract/agreement which was for the entire project area consisting of 24 Wards. He however, does not dispute the calculation of the Respondent Corporation in relation to the acceptance of the PPR for Zone-III which as per the Corporation is a sum of Rs.25,34,550. He has explained that in his claim summary of which has been given in Annexure-5 to the statements of

facts and claims has been mentioned as Rs.25,35,000 the difference of Rs.405 has been explained by him as the figure having been rounded off. The said figure has been mentioned at Sl.No.5 of A of the Chart Annexure-5.

He has further clarified that he has claimed a sum o fRs.69,50,000 as the amount due on submission of PPR for the total project area which is mentioned at Sl. No.3-A of Annexure-5 whereas the amount as admitted by the Respondent Corporation in its letter dated 22.10.2005 is a sum of Rs.38,01.825.00 which sum he has rounded off and mentioned in Sl.No.4 of A of Annexure-5 being the rounded off figure as presented by the claimant/consultant. This figures he says is for ten Wards though in fact the report submitted for the project areas would be Rs.69,50,000 which would be due as PPR for the entire area has been submitted, he has mentioned that the amount mentioned in Sl.No.4 has been wrongly stated to have been received which is clarified by the remarks column to Annexure-5 which amount has been actually adjusted and included in the amount i.e. the figure shown as due on submission of PPR for the total project area. In other words his claim is that as per the agreement the Respondent Corporation is liable to pay the entire cost on submission of PPR for the whole project area, which has been submitted which would be @ 9% and they cannot bifurcate the same and agree to pay only for ten Wards and thereby reduce a sum of Rs.31,48,000 though they could accept the same for only ten Wards which they have done.

17. Apart from the aforesaid submissions which as per Mr. Jerath would show that there was no delay on the part of the Consultant in submitting the report, since they had to revise the same on recommendations of the Committee appointed by the Government which accepted the reports. He further contended that even as per the report of the Assemby Committee which is Annexure-II to the Replication filed by him. The letters dated 02.07.2005 and 22.10.2005 have been considered at page 39 of the report, which formed part of the proceedings before the Assembly Enquiry Committee. Further the

Administrator and Deputy Administrator of the Municipal Corporation as per the report of the Assembly Committee could not give any satisfactory reply in relation to the cancellation of the agreement and whether the same fell within Clause 2.7 of the Agreement which has been noted on page 41 of the Assembly Report, which also mentions that ORG had further submitted the revised PPR for Zone-III on 31.03.2005 and which had been accepted by the Respondent Corporation this finding having been recorded at page 51 of the Assembly report. The aforesaid report which was recommendatory in nature has made certain observations against the Departmental Minister also which I don’t feel is necessary to be gone into since the entire report is recommendatory in nature. I have just mentioned certain parts of the report which is in relation to submission of PPR and acceptance of the same including the two letter of the Corporation dated 02.07.2005 and 22.10.2005 to show that these fact are admitted fact. It would thus be evident from the above that the inception reports have been submitted which were accepted subsequently the PPR for the whole project was also submitted. However, the Consultants were asked to re-submit the same for ten Wards being Zone-III which report was re-submitted and accepted. Thereafter, due to the cancelation of the agreement no further work was done. The last letter thus addressed to the Consultant i.e. the letter dated 15.04.2005 directing submission of revised PPR within a week had thus been complied in so far as Zone-III was concerned. The time for submission of these PPR were thus extended by the Corporation.

18. From the document which have been placed before me it is clear that the Respondent Municipal Corporation had issued no notice to the claimant Consultant for cancellation of the contract. Though it has been contended by Sh. Rajesh Lala on behalf of the Respondent Corporation that there was no need to issue such notice as the was not contemplated under the agreement.

19. That, reverting back to agreement and the clause of termination which is relied upon by the Respondent Corporation I find that Clause 2.7 of the agreement which deals with termination of contract has not been resorted to since it is not the case of either party that the work could not be continued any further due to any reason beyond the control of either party, nor was there a mutual agreement of both the client and the consultant to terminate the contract. The undisputed fact which arises is that the contract was terminated simply on the direction of the State Government, which again admittedly was not a party to the contract. Rather to the contrary as per the letter dated 15.06.2005 which has been brought on record by the Respondent Corporation as Annexure-1 to the reply it is clearly stated in paragraph-4 of the said letter that since the agreement with the Consultant was done at the level of the Corporation and as such it is the Corporation along which should terminate the agreement and the Corporation was directed to do so expeditiously. I, thus, find that the agreement was terminated dehors the contract since the ground for termination of the contract is not covered by clause 2.7 of the agreement. I am further fortified in coming to the aforesaid decision In view of clause 2.4 of the agreement which states "this contract contains all covenants, stipulations and provisions agreed by the parties. No agent or representative of either party has authority to make, and the parties shall not be bound by or be liable for any statement, representation, provide or agreement not set forth herein." The Respondent Ranchi Municipal Corporation is a statutory body which has entered into an agreement with the claimant. It is thus expected that this statutory body must exercise its powers consistent with the statute and it is further expected that it should be fair in its dealings. Sh. Lala, however, has made a categorical statement that the cancellation of the contract and the termination of the agreement was not done by the Corporation on its own. Rather, the same had been done on the directions of the State Government. Contending that the Corporation was

bound to follow the directions of the State Government since it received its founding's from the same. This statement and submission of Sh. Rajesh Lala on behalf of the Respondents does no stand especially considering his own admission that the Corporation is an independent statutory body and it is the Corporation which had entered into a contract with the claimant Consultant. The fact that the agreement does not in any part state or show that the same was being made by the Corporation on behalf of the State Government or on instructions of the State Government, further shows that the State Government did not have any jurisdiction to order for cancellation of the same since no facts arose which would justify the State Government from exercising is powers under Section 529 of the Ranchi Municipal Corporation Act. Further, Mr. Lala has not been able to show as to which resolution or order of the Municipal Corporation had been set aide by the State Government or in what manner would section 529 of the Act. be attracted and as to what was the resolution or the order which was not in conformity with law/rules regulations or against public policy or detrimental to public interest or which amounted to fritting away public funds. The order of cancellation is thus held to be bad, as the reason assigned for cancellation is not a valid one.

20. An effort has further been made by the Respondent Corporation stating that the claimant/consultant has not produced any license agreement of satellite date/products which would show that they had engaged IKONOS Satellite for preparation of base map and as such the claim of the consultant claimant cannot be maintained. I fail to understand this stand of the Respondent Corporation, since they have admittedly already made payments for the inception reports for which purpose the concerned date was required. Further, in reply to the same, it has been contended by the claimant who have referred to Annexure-12 to their reply which is a letter dated 28th August, 2004 written by their Managing Director and addressed to the Administrator, Ranchi Municipal Corporation, Ranchi dated 28th August, 2004 wherein it has been

stated that the delay on the projected outputs was attributed to the late receipt of IKONOS data from NRSA, Hyderabad. However, ORG had taken the minimum time required for processing, digitizing, labeling of the maps for the same which had already been dispatched for handling over to the Corporation and it was now only the ground survey prior to design/planning and engineering input which were to be submitted being the PPR. This communication dated 28th August, 2004 has not been disputed by the Respondent Corporation and it thus seems that the objection raised about engagement of IKONOS Satellite is not true.

21. Further, I find that the letters of the Corporation issued by its Deputy Administrator being letters dated 02.07.2005 and 22.10.2005 as dealt with in detail in the earlier part of this award are admitted and in fact formed part of the records of the Assembly Committee which had issued its recommendations and as hence in view of the said it cannot be disputed that the Consultant had completed the work as per the agreement till the stage of submission of inception report, its acceptance. Submission of PPR for the whole project and acceptance of the PPR for Zone-III i.e. en Wards. I, thus, find and hold that the claimant Consultant is entitled to receive payment for the stages aforesaid which has also been admitted by the Respondent Corporation in the letter issued by the Deputy Administrator bearing No.2195 dated 22.10.2005 as contained in Annexure-10. I also hold that the claimant consultant is entitled to receive fee for submission of PPR for the total project area amounting to Rs.69,50,000 and not just an amount of Rs.38,01,825 as stated by the Deputy Administrator, Ranchi Municipal Corporation which was for the submission of PPR for Zone-III only consisting of ten Wards since the claimant Consultant became entitled to claim fee @ of 9% on submission of PPR. The balance 6% becoming payable on acceptance of PPR which admittedly as per the case of both the parties was done only for Zone-III i.e. the acceptance of PPR was done for Zone-III only consisting of ten

Wards. 5% of the security deposit deduction on pro-rata basis for each phase of work which had been deducted at each stage of payment, which I have termed as retention money also becomes payable to the claimant Consultant. The amount which the claimant consultant is entitled to for the works already submitted are :

1) Rs.2,40,218 being a retention money for submission of inception report;
2) Rs.1,60,145 being the retention money due after acceptance of inception report;
3) Payment of a sum of Rs.69,50,000 being the amount due on submission of PPR for total project area and a sum of Rs.25,35,000.00 being the sum payable on acceptance of PPR for Zone-III.

22. It is now to be decided as to what would be the amount due as winding up expenses and damages which forms sub-heading (b) of the claim of the Consultant towards unpaid fee, damages and interest. This amount has been divided into six heads period-wise. The first being from 17.06.2005 i.e. the date of termination of the agreement to 16.03.2007, when the Consultant filed his case. The amount claimed for this period i.e. a period of 21 months. The name is divided under six heads under the head read a sum of Rs.1,07,500 as claimed @Rs.5000/- per month. Further a sum of Rs.2,20,000 has been claimed under the head for salary which has been explained to me being fixed salary of Rs.10,000/- a month paid to their manager/retainer at Ranchi, this also seems to be reasonable. The other amount which has been given is office expenses including maintenance which amounts to Rs.3,48,988/- it is stated that office expenses included salary of the office boy and clearing maid. Apart from this a sum of Rs.11,404/- has been claimed as telephone expenses and a sum of Rs.28,250/- as travel expenses. The aforesaid amounts are quiet reasonable and have not been disputed. Under the second head i.e. for the period 2007-2008 a further sum of Rs.3,82,394 has been claimed under six heads where after from April 2008 to June 2010 a sum of Rs.7,13,170 has

been claimed in which an amount of Rs.1,50,000/- has been included as court expenses which the claimant says includes Advocate's fee. Similarly, for the period July 2010-11 a sum of Rs.3,64,752 have been claimed including a sum of Rs.75,000/- as court expenses which again is stated to include Advocate's fee. The fifth heading is for the period August 2011 to January 2012 for maintaining minimum support and infrastructure which amount comes to Rs.1,35,709. Sub-heading 6 is for expenses incurred towards arbitration from July 2010 to July 2011 which is of a sum of Rs.5,12,827/-. The seventh expense being from August 2011 to January 2011 being expenses towards arbitration amounting to Rs.4,69,791/-. These amounts have been mentioned in Annexure-5 to the statements of fact and claim which is till heading-3 i.e. till June 2010 when the claim was filed. Sub-heading 4,5,6 and 7 i.e. from July 2010 till January 2012 having been annexed alongwith the written submissions of the claimant. These sums have also not been disputed by the Respondent and as said earlier seems to be quiet reasonable i.e. salary of Rs.10,000/- per month paid to the manager/retainer Rs.500/- per month towards electricity charges, Rs.5000/- per month towards rent, which is said to have been enhanced to Rs.6000/- per month subsequently and office expenses telephone expenses etc. including expenses towards litigation the other charges incurred towards arbitration for which the claimants said they have due bills, which have not been dispute by the respondent. I thus find and hold that these expenses are also payable to the claimant.'

23. Claim NO.8 is for a sum of Rs.1,80,07,948 being interest on unpaid fees at the interest rate of Rs.16% from 10.06.2005 to June 2010.

24. The next heading being towards damages for loss of goodwill, loss of credibility and loss of opportunity for other projects in the State of Jharkhand under which heading a consolidated sum of Rs.50 lakhs is claimed, which learned counsel for the claimant says is absolutely justified since as per the

impugned direction of the State Government a decision had been taken that no work be taken from the claimant/Consultant in future.

(Chart of claims including litigation and Arbitration Expenses with interest annexed)

TABLE 1 : ORG'S CLAIM TOWARDS UNPAID FEES/DAMAGES/INTEREST ETC.

A. Details of Invoices submitted and Payment Received thereof							
Sl. No.	Invoice No.	Date	State of Payment	Invoice Amount	Payment Received	Balance Amount	Remark
1	57311	05-12-2003	Submission of Inception Report	48,04,350.00	45,64,132.00	2,40,218.00	Withheld
2	57312	13-03-2004	Acceptance of Inception Report	32,02,900.00	30,42,755.00	1,60,145.00	Withheld
3	573P1	20-12-2004	Submission of PPR for Total Project Area	69,50,000.00	0.00	69,50,000.00	Outstanding
4	573P2	25-04-2005	Submission of PPR for Zone III (Consisting of 10 wards)	38,02,000.00	38,02,000.00	0.00	Adjustment
5	573P3	10-06-2005	Acceptance of PPR for Zone III (Consisting of 10 wards)	25,35,000.00	0.00	25,35,000.00	Outstanding
			Total (Rs.)	**2,12,94,250.00**	**1,14,08,887.00**	**98,85,363.00**	
B. Winding up expenses and damages							
1.	Expenses incurred from the date of termination of agreement 17-06-2005 to date of filing case 16-03-2007						
			Rent	1,07,500.00	0.00	1,07,500.00	
			Electricity charges	10,750.00	0.00	10,750.00	
			Salary	2,20,000.00	0.00	2,20,000.00	
			Office Expenses including maintenance	3,48,988.00	0.00	3,48,988.00	
			Telephone Expenses	11,404.00	0.00	11,404.00	
			Travel Expenses	28,220.00	0.00	28,220.00	
			Total (Rs.)	**7,26,862.00**	0.00	**7,26,862.00**	
2.	Expenses incurred from April 2007 to March 2008 to maintain minimum support and infrastructure for follow-up and laisoning						
			Rent	60,000.00	0.00	60,000.00	
			Electricity charges	6,000.00	0.00	6,000.00	
			Salary	1,20,000.00	0.00	1,20,000.00	
			Office Expenses including maintenance	1,84,540.00	0.00	1,84,540.00	
			Telephone Expenses	11,854.00	0.00	11,854.00	
			Total (Rs.)	**7,26,862.00**	0.00	**3,82,394.00**	
3.	Expenses incurred from April 2008 to June 2010 to maintain minimum support and infrastructure for follow-up and laisoning						
			Rent	1,41,000.00	0.00	1,41,000.00	
			Electricity charges	13,500.00	0.00	13,500.00	
			Salary	2,70,000.00	0.00	2,70,000.00	
			Office Expenses including maintenance	1,12,000.00	0.00	1,12,000.00	
			Telephone Expenses	26,670.00	0.00	26,670.00	
			Court Expenses	1,50,000.00	0.00	1,50,000.00	
			Total (Rs.)	**7,13,170.00**	0.00	**7,13,170.00**	
4.	Expenses incurred from July 2010 to July 2011 to maintain minimum support and infrastructure for follow-up and laisoning						
			Rent	78,000.00	0.00	78,000.00	
			Electricity charges	6,500.00	0.00	6,500.00	
			Salary	1,30,000.00	0.00	1,30,000.00	
			Office Expenses including maintenance	64,383.00	0.00	64,383.00	

	Telephone Expenses	10,869.00	0.00	10,869.00	
	Court Expenses	75,000.00	0.00	75,000.00	
	Total (Rs.)	**3,64,752.00**	**0.00**	**3,64,752.00**	
5.	Expenses incurred from August 2011 to January 2012 to maintain minimum support and infrastructure for follow-up and laisoning				
	Rent	44,000.00	0.00	44,000.00	
	Electricity charges	3,000.00	0.00	3,000.00	
	Salary	60,000.00	0.00	60,000.00	
	Office Expenses including maintenance	25,751.00	0.00	25,751.00	
	Telephone Expenses	2,958.00	0.00	2,958.00	
	Total (Rs.)	**1,35,709.00**	**0.00**	**1,35,709.00**	
6.	Expenses incurred towards Arbitration from July 2010 to July 2011				
	Arbitration Fee	2,00,000.00	0.00	2,00,000.00	
	Secretarial charges foe Arbitrator	20,000.00	0.00	20,000.00	
	Advocate’s Fee	1,20,000.00	0.00	1,20,000.00	
	Assistant to Advocate	40,000.00	0.00	40,000.00	
	Travel expenses for Arbitrator	20,684.00	0.00	20,684.00	
	Hotel Accommodation for Arbitrator	91,473.00	0.00	91,473.00	
	Vehicle Hire Charges	20,670.00	0.00	20,670.00	
	Total (Rs.)	**5,12,827.00**	**0.00**	**5,12,827.00**	
7.	Expenses incurred towards Arbitration from August 2011 to January 2012				
	Arbitration Fee	2,00,000.00	0.00	2,00,000.00	
	Secretarial charges foe Arbitrator	20,000.00	0.00	20,000.00	
	Advocate’s Fee	1,20,000.00	0.00	1,20,000.00	
	Assistant to Advocate	40,000.00	0.00	40,000.00	
	Travel expenses for Arbitrator	11,211.00	0.00	11,211.00	
	Hotel Accommodation for Arbitrator	63,810.00	0.00	63,810.00	
	Vehicle Hire Charges	14,770.00	0.00	14,770.00	
	Total (Rs.)	**4,69,791.00**	**0.00**	**4,69,791.00**	
8.	Interest on the aforesaid unpaid fees amount @ Rs.16% per annum from the date when these became due (10/06/2005) and upto June 2010	1,80,07,948.00	0.00	1,80,07,948.00	
9.	Damages towards good will loss of credibility and loss of opportunity for other Projects in the State of Jharkhand.	50,00,000.00	0.00	50,00,000.00	
A+B	**Grand Total (Rs.)**	**4,76,07,703.00**	**1,14,08,887.00**	**3,61,98,816.00**	

25. In the facts and circumstances of the case and on consideration of the evidence and submission of the Learned Advocate appearing for the parties, I conclude and hold that the claimant is entitled to the amount as disclosed in the chart annexed herewith.

The Award is accordingly given on this day of ………..30th may 2012 at Ranchi in presence of the parties.

Justice U.P. Singh
Former Chief Justice, Kerala
Sole Arbitrator