

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.12867 of 2019**

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M/s Ganesh Yadav Firm, Proprietor, Ganesh Yadav, Male, aged about 71 years, Son of Late Sohar Yadav, resident of Mohalla- Anand Nagar, Saraidhela, P.S.- Dhanbad, Distt.- Dhanbad (Jharkhand), through his power of Attorney Anil Kumar, Male, Aged about 59 years, Son of Sri Ram Ayodhya Prasad, Resident of Mohalla- Gandhi Gram, Jail Road, Tilkamanjhi, P.S.- Tilkamanjhi, Distt.- Bhagalpur

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Road Construction Department, Govt. of Bihar, Patna
3. The Engineer in Chief, Road Construction Department, Govt. of Bihar, Patna
4. The Chief Engineer (South Bihar Wing) Road Construction Department, Bhagalpur
5. The Superintending Engineer, East Bihar Circle, Road Construction Department, Bhagalpur
6. The Executive Engineer, Road Construction Department, Road Division, Bhagalpur

... .. Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mrs. Nivedita Nirvikar, Sr. Advocate |
|                      |   | Mr. Satish Chandra Jha 3, Advocate   |
| For the Respondent/s | : | Mr. Syed Iqbal Ahmad (SC 20)         |

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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE PARTHA SARTHY**

**ORAL JUDGMENT**

**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 29-11-2022**

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):

“(I) To direct the respondents to refund the whole security amount in favour of the petitioner deposited in terms of Agreement bearing Agreement



No 4(P) F-2/2006-07, 2(P) F-2/2006-07 and Agreement No 7(P) F-2/2006-07 because during the progress of work, said agreement were cancelled at the dictate of Principal Secretary, Road Construction Department, Government of Bihar, Patna which was challenged by the petitioner by filing C.W.J.C.No 5646/2008, C.W.J.C.No 5647/2008 and C.W.J.C.No 5757/ 2008 and said writ applications were disposed of vide common order dated 29.5.2008 whereby and where under Justice Rajendra Prasad, Former Judge, Patna High Court, was appointed as sole arbitrator, who having hearing of the parties granted Award dated 7.11.2010 in favour of the claimant petitioner and said Award has been challenged by the respondents by filing Misc Case no 2/2011, 3/2011 and 4/2011 which are pending for final disposal since long and respondents are not taking any interest for disposal of the same, result being that, financial condition of the petitioner has deteriorate to the extent that he is not in position to maintain his family and staff.

(ii) To direct the respondents to refund/ exchanged N.S.C which has already been matured after accepting fresh N.S.C like amount i.e. face value of matured N.S.C because in the year 2011 the respondents had refunded the matured N.S.C after accepting fresh N.S.C of like amount, but now the respondent Executive Engineer, Road Division, Bhagalpur is not ready to refund the same in aforesaid term, reason best known to him, though



law does not permit him to deny refund/ exchanged of matured N.S.C.

(iii) That the Hon'ble Court may be pleased to grant any other relief or reliefs to the petitioner as this Hon'ble Court may think it proper in the present facts and circumstances of this case.”

The sole issue which arises for consideration is as to whether the security amount deposited by the petitioner amounting to Rs.18,96,600/- can be returned to the petitioner who, in fact, has an award dated 29.5.2008 passed by the learned Arbitrator in his favour.

It is not in dispute that the award is operative, even though the matter is pending adjudication before the Court having competent jurisdiction at Bhagalpur.

Respondents are insisting upon the petitioner furnishing security of the amount of the NSC which has now matured. This insistence is totally illegal moreso in view of the fact that the award is in the petitioner's favour, in terms whereof petitioner is entitled for a sum of Rs.1,84,21,005/-.

At this stage, Mrs. Nivedita Nirvikar, learned senior counsel for the petitioner states that in order to put an end to the controversy pending adjudication of the award, petitioner is ready and willing to submit fresh security equivalent to the principal amount and not the matured value amount.



Well, we see no reason in the respondent’s accepting this offer and, as such, we direct it to be so.

The NSC furnished by the petitioner at the time of execution of the contract shall be returned forthwith with the petitioner furnishing a fresh security of the original amount of security.

Petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, shall also stand disposed of.

**(Sanjay Karol, CJ)**

**( Partha Sarthy, J)**

Saurabh/P.K.P.

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