

**(2003) 03 OHC CK 0025**

**In the Orissa High Court**

**Case No :** Civil Revision Petition No's. 272, 303 and 333 of 2002

Banchhanidhi Samal

APPELLANT

Vs

Basudev Nayak and Others <BR> Kulamani Mallick Vs  
Shankarshan Behera and Another <BR> Sumitra Dalei Vs  
Musha Dei and Others

RESPONDENT

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**Date of Decision :** 21-03-2003

**Acts Referred:**

Arbitration and Conciliation Act, 1996 — Section 37, 37(2)(b)  
Civil Procedure Code, 1908 (CPC) — Section 115  
Constitution of India, 1950 — Article 226  
Orissa Grama Panchayat Act, 1965 — Section 38, 38(4)

**Citation :** (2003) 03 OHC CK 0025

**Hon'ble Judges :** P.K. Tripathy, J

**Bench :** Single Bench

**Advocate :** S.P. Mishra, S.K. Mishra, S. Nanda and M.R. Dash, for the Appellant;  
D.P. Dhal, B.B. Misra, K. Das, (for O.P. No. 2), for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

P.K. Tripathy, J.—A common question of law has been for consideration relating to maintainability of Civil Revision Petition u/s 115, CPC as against interlocutory orders passed by the concerned Civil Judges (Junior Division), relating to election dispute under the Orissa Grama Panchayat Act, 1965 (in short "the Act").

2. Opposite party No. 1 in Election Misc. Case No. 7 of 2002 of the Court of Civil Judge (Junior Division), Nayagarh has filed the Civil Revision Petition No. 272 of 2002 challenging to the order dated 13.9.2002 passed in that case. It appears from the impugned order that application filed by the election-Petitioner (Opposite party No. 1 in this revision) to issue a direction to opposite No. 3, Block Development Officer, Bhapur to cause production of voters list, ballot papers and counting result-sheets in original for perusal of the Court was considered and allowed by the Court below.

Opposite party No. 1 in Election Misc. Case No. 7 of 2002 of the Court of Civil Judge (Jr. Division), Nimpara has filed the Civil Revision Petition No. 303 of 2002 challenging to the order passed by that Court on 11.10.2002. It appears from the impugned order that while disposing of two separate petitions filed by both the parties relating to calling for certain records, counter foil of ballots etc. was considered and the Court below allowed the prayer in part of both the parties.

Opposite party No. 1 in Election Misc. Case No. 24 of 2002 of the Court of Civil Judge (Jr. Division) Jajpur has filed Civil Revision Petition No. 333 of 2002 challenging to the order passed by the Court below on 20.12.2002 rejecting her application for amendment of show-cause on the ground that such amendment is redundant and filed only to delay disposal of the proceeding.

3. Mr. S.P. Misra, learned Counsel appeared for the Petitioners in each of the revisions whereas different sets of learned Counsel as noted above have appeared for the opposite parties. In each of the cases, learned Additional Government Advocate appeared for the Government Officers who have been added as opposite parties. In each of the cases, at the stage of admission a common question/was raised relating to maintainability of the revisions and in view of that argument has been heard only on the question of maintainability and it has been made clear to the Bar that the Civil Revision Petitions shall be heard on merit if the same shall be found maintainable. Therefore, the present order remains confined only on the maintainability of the Civil Revision Petitions.

4. Mr. B.H. Mohanty, learned Senior Counsel appearing on behalf of the opposite party in CRP No. 333 of 2002 argued that though the Civil Judge is subordinate to the High Court but the dispute which he undertakes to adjudicate under the Act is as an Election Tribunal and in that respect while passing any order he is not a Court subordinate to the High Court and therefore a Civil Revision u/s 115, CPC is not competent against such orders but a writ application may be maintainable. In that respect, he refers to and relies on a large number of decisions. But in view of the citations relied on by him relating to the case of Niranjana Sahu Vs. Narasu Satpathy and Others, , there is no necessity to refer to the other citations. Learned Counsel appearing for the opposite parties in the other two Civil Revision Petitions advanced same argument.

5. Mr. S.P. Misra, learned Counsel for the Petitioners on the other hand argued that when the Court of Civil Judge (Junior Division) is a Court subordinate to the High Court, therefore, any order passed by that Court amounts to a case decided by a Court subordinate to the High Court and therefore a revision u/s 115, CPC is maintainable in the High Court. He further argued that when the impugned orders are not appealable in view of the provision in Sub-section (4) of Section 38 of the Act therefore legal remedy to the aggrieved parties is available only u/s 115, CPC In support of his contention Mr. S.P. Misra, relied on the case of I.T.I. Ltd. Vs. Siemens Public Communications Network Ltd., .

6. So far as the provision of law in Section 38 of the Act is concerned, there has

been no other amendment in that Section except substituting the words "Civil Judge (Junior Division)" as against the word "Munsif".

7. In the case of Niranjana Sahu (supra) Division Bench of this Court presided by Hon'ble Shri G.K. Misra, C.J. (as his Lordship then was) while in seisin of a similar matter under the Act after considering the provision in Section 38 of the Act propounded that except the orders which are enumerated in Sub-section (1) and (2) in Section 38 no other order passed in course of a proceeding by the Munsif (Civil Judge, (Junior Division)) is appealable under Sub-section (4) of Section 38. That proposition of law was made to reject the contention of the opposite party that the impugned interim order was appealable in view of the provision in Sub-section (4) of Section 38. After recording such conclusion their Lordships held that-

It merely conceives of final orders either of dismissal or of allowing the Election Petition. We are therefore satisfied that there is no substance in the preliminary objection. No appeal lies to the District Judge, and the only remedy is by an application under Article 226 of the Constitution.

(Underlined by this Court to put emphasis).

8. In the case of M/s I.T.I. Ltd. (supra) the Apex Court while in seisin of an order passed by the appellate Tribunal as against an order passed by the Arbitration Tribunal in accordance with the provision in Section 37(2)(b), Arbitration and Conciliation Act, 1996 a contention was raised by the Appellants before the apex Court is the order of the appellate Court was revisable by the High Court u/s 115, CPC In that context, the apex Court propounded that a revision is maintainable.

9. The provision in Section 38 of the Act and the provision in Section 37 of the aforesaid Arbitration Act of 1996 do not stand at par. Thus, the aforesaid two provisions in the above noted two statutes are not "pari materia". Hence the ratio of the Supreme Court does not supersede or destabilise the view expressed by this Court in the case of Niranjana Sahu (supra). As a matter of precedent above quoted ratio in the case of Niranjana Sahu is followed in the cases at hand. As a logical consequence thereof, therefore this Court holds that the Civil Revision Petitions are not maintainable. Apart from that, this Court also finds that the impugned orders if would have been passed in favour of the persons who have preferred these revision petitions then such orders would not have finally disposed of such proceedings. On that score also the Civil Revisions are not maintainable in view of the recent amendment to the provision in Section 115, CPC by Act 46 of 1999.

10. For the reasons indicated above, all the three Civil Revision Petitions stand dismissed as not maintainable. It is up to the Petitioners, if so legally advised, to seek remedy in appropriate forum as against the impugned orders.