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# IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) No.35289, 35291, 35309, 35312, 35317 of 2025**
**And**
**W.P.(C) No.3223, 44, 6384 & 8151 of 2026**

(In the matter of an application under Articles 226 and 227 of the Constitution of India)

***In W.P.(C) No.35289 of 2025***
***ODHC010887612025***
***State of Odisha and others*** .... ***Petitioners***

*-versus-*

***M/s.Dhanurdhar Champatiray, Proprietor and Special Class Contractor, Nayapalli, Bhubaneswar*** .... ***Opposite Party***

Advocate(s) appeared in this case:-

| | | |
|---|---|---|
| For Petitioners | : | Mr.G.Tripathy, AGA<br>Mr.T.K.Dash, AGA |
| For Opposite Party | : | Mr.A.Sanganeria, Advocate |

***In W.P.(C) No.35291 of 2025***
***ODHC010887722025***
***State of Odisha and others*** .... ***Petitioners***

*-versus-*

***M/s.Dhanurdhar Champatiray, Proprietor and Special Class Contractor, Nayapalli, Bhubaneswar*** .... ***Opposite Party***

Advocate(s) appeared in this case:-

| | | |
|---|---|---|
| For Petitioners | : | Mr.G.Tripathy, AGA<br>Mr.T.K.Dash, AGA |
| For Opposite Party | : | Mr.A.Sanganeria, Advocate |

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***In W.P.(C) No.35309 of 2025***
***ODHC010889302025***
***State of Odisha and others*** .... ***Petitioners***

*-versus-*

***M/s.Dhanurdhar Champatiray, Proprietor and Special Class Contractor, Nayapalli, Bhubaneswar*** .... ***Opposite Party***

Advocate(s) appeared in this case:-

| | | |
|---|---|---|
| For Petitioners | : | Mr.G.Tripathy, AGA<br>Mr.T.K.Dash, AGA |
| For Opposite Party | : | Mr.A.Sanganeria, Advocate |

***In W.P.(C) No.35312 of 2025***
***ODHC010888972025***
***State of Odisha and others*** .... ***Petitioners***

*-versus-*

***M/s.Dhanurdhar Champatiray, Propriator and Special Class Contractor, Nayapalli, Bhubaneswar*** .... ***Opposite Party***

Advocate(s) appeared in this case:-

| | | |
|---|---|---|
| For Petitioners | : | Mr.G.Tripathy, AGA<br>Mr.T.K.Dash, AGA |
| For Opposite Party | : | Mr.A.Sanganeria, Advocate |

***In W.P.(C) No.35317 of 2025***
***ODHC010889032025***
***State of Odisha and others*** .... ***Petitioners***

*-versus-*

***M/s.Dhanurdhar Champatiray, Propriator and Special Class Contractor, Nayapalli, Bhubaneswar*** .... ***Opposite Party***

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Advocate(s) appeared in this case:-

| | | |
|---|---|---|
| For Petitioners | : | Mr.G.Tripathy, AGA<br>Mr.T.K.Dash, AGA |
| For Opposite Party | : | Mr.A.Sanganeria, Advocate |

***In W.P.(C) No.3223 of 2026***
***ODHC010061182026***
***M/s.Mahanadi Coalfields Ltd.,***
***Jagriti Vihar, UCE, Burla,***
***Sambalpur and others*** .... ***Petitioners***

*-versus-*

***M/s.Sidhartha Engineering Ltd.,***
***Gandamunda, Bhubaneswar*** .... ***Opposite Party***

Advocate(s) appeared in this case:-

| | | |
|---|---|---|
| For Petitioners | : | Mr.H.Mohanty, Advocate |
| For Opposite Party | : | Mr.L.Pangari, Sr.Advocate |

***In W.P.(C) No.44 of 2026***
***ODHC010923422025***
***Odisha Mining Corporation Ltd.,***
***OMC House, Bhubaneswar*** .... ***Petitioner***

*-versus-*

***Faridabad Gurgaon Minerals,***
***Haryana*** .... ***Opposite Party***

Advocate(s) appeared in this case:-

| | | |
|---|---|---|
| For Petitioner | : | Mr.P.K.Muduli, Advocate |
| For Opposite Party | : | Mr.S.S.Mohanty, Advocate |

***In W.P.(C) No.6384 of 2026***
***ODHC010135402026***
***Odisha State Road Transport***
***Corporation, Khurda*** .... ***Petitioner***

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*-versus-*

***ARSS Bus Terminal Pvt. Ltd., Khurda*** .... ***Opposite Party***

Advocate(s) appeared in this case:-

| | | |
|---|---|---|
| For Petitioner | : | Mr.A.Tripathy, Advocate |
| For Opposite Party | : | Mr.N.Thackar, Advocate |

***In W.P.(C) No.8151 of 2026***
***ODHC010167392026***
***M/s.Choudhury Fabrication Works, Sambalpur*** .... ***Petitioner***

*-versus-*

***District Education Officer, Sundargarh*** .... ***Opposite Party***

Advocate(s) appeared in this case:-

| | | |
|---|---|---|
| For Petitioner | : | Mr.Mohit Agarwal, Advocate |
| For Opposite Party | : | Mr.G.Tripathy, Advocate |

**CORAM: JUSTICE B.P. ROUTRAY**

**JUDGMENT**

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**Date of Hearing : 15th July 2026**
**Date of Judgment : 21st September 2026**

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***B.P. Routray, J.***

1. The common issue involved in all these writ petitions, irrespective of their individual merits, is on the question of maintainability as a preliminary objection raised referring to the provisions contained in Section 37(3) of the Arbitration and Conciliation Act, 1996 (hereinafter stated as "1996 Act"). In view of

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limited question on maintainability, with reference to Section 37(3) of 1996 Act, the detailed facts of cases touching their respective merits is not required to be stated essentially. All the writ petitions are preferred challenging the order passed by the Appellate Authority, i.e. the District Judge in terms of Section 37(1) of 1996 Act. The preliminary objection raised with regard to maintainability of all these writ petitions is to the effect that, when no provision of second appeal, except appeal to the Supreme Court, is provided in 1996 Act, present writ petitions filed under Article 226 & 227 of the Constitution of India cannot be maintainable in the guise of second appeal to this Court.

It is submitted that 1996 Act is a self contained code and provision of Section 5 and 37 thereof denies the right of second appeal under any circumstances. The writ petitions before this Court cannot be held maintainable to question the order of appellate authority passed under Section 37(1) of 1996 Act.

**2**. It is true that 1996 Act is a self contained code. Section 5 of the said Act reads as follows:

> "**5. *Extent of judicial intervention***.—Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part."

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**3.** Further, Section 37, which is material to be referred here, reads as follows:

> "**37. *Appealable orders***.—(1) An appeal shall lie from the following orders (and from no others) to the court authorised by law to hear appeals from original decrees of the Court passing the order, namely—
>
> (*a*) refusing to refer the parties to arbitration under Section 8;
>
> (*b*) granting or refusing to grant any measure under Section 9;
>
> (*c*) setting aside or refusing to set aside an arbitral award under Section 34.
>
> (2) An appeal shall also lie to a court from an order granting of the Arbitral Tribunal—
>
> (*a*) accepting the plea referred in sub-section (2) or sub-section (3) of Section 16; or
>
> (*b*) granting or refusing to grant an interim measure under Section 17.
>
> (3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

**4.** The Commercial Courts Act, 2015 within the ambit of its provisions recognizes the forum structure for adjudication of commercial disputes. For the State of Odisha within its territory, the Commercial Courts are headed by Judicial Officers in the cadre of Senior Civil Judge and Commercial Appellate Courts are headed by the Principal District Judges within their respective jurisdiction. What happened in present writ petitions is that, the award passed by the Arbitrator was challenged before the Commercial Courts under Section 34 of 1996 Act and then the order and judgment of the Commercial Court was challenged before the Commercial Appellate Court, i.e. the District Judge under Section 37(1) of 1996 Act. Thereafter, against the

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order of the learned District Judge is challenged in present writ petitions by respective aggrieved parties. Thus, the objection is raised to present writ petitions that, the same in the guise of second appeal are not maintainable being not permitted within the scope of 1996 Act and therefore, the parties are to approach the Hon'ble Supreme Court directly.

**5.** It may be stated here that appeal is a creature of statute and unless so permitted in the statute, an aggrieved party cannot invoke the remedy of appeal unrecognized in the statute. Section 37 of 1996 Act is the last statutory remedy in the statutory scheme framed in 1996 Act. Section 37 provides a limited appellate remedy and no further appeal, except appeal to the Supreme Court is permissible against the order passed under Section 37(1) of the Act. It would not be any gain saying that that the remedy under Article 226 and 227 of the Constitution of India is not an appellate remedy. The jurisdiction of the High Court under Article 226 and 227 of the Constitution would come to the questions of jurisdiction, illegality and alike and it cannot be curtailed by the presence of provisions of the Act. In ***Nivedita Sharma vrs. COAL, (2011) 14 SCC 337,*** the Hon'ble Supreme Court has explained that there cannot be any dispute that the power of High Courts to issue

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directions, orders or writs including writs of different natures is the basic feature of the Constitution and cannot be curtailed by Parliamentary Legislation. It has been further explained that, it is one thing to say that in exercise of power vested in the High Court under Article 226 of the Constitution, it can entertain a writ petition against any order passed by or action taken by the State and/or its agency/instrumentality or any public authority or order passed a quasi judicial body/authority, and it is all together different to say that each and every objection filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled that when a statutory forum is created by law for redressal of the grievances, a writ petition should not be entertained ignoring the statutory dispensation. In ***Thansingh Nathmal vrs. Supt. of Taxes, AIR 1964 SC 1419***, the Hon'ble Supreme Court has observed as follows:

> '*7.* … The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High

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> Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.'

**6.** There is no quarrel over the proposition that the supervisory power under Article 227 can only be exercised where there is demonstrable perversity or the order of the Arbitral Tribunal is patently without jurisdiction or offends the basis structure of Constitution. The Arbitral Tribunals though are distinct from statutory or constitutional tribunals, but are given the functions of adjudicating legal disputes and for their obligation to adhere to the principles of natural justice can be questioned within the scope of judicial review under Article 227 of the Constitution. However, the supervisory control under Article 227 of the Constitution is not equivalent to the appellate review and the rule is confined to correct manifest circumstances of illegality, faith or perversity so glaring that it indicts a patent lack of jurisdiction and should not be used in routine manner lest would nullify the entire performance of separate arbitration regime. (***See: Bhaben Construction vrs. Sardar Sarover Narmada Nigam Ltd, (2022) 1 SCC 75, Punjab State Power Corporation Ltd. vrs. EMTA Coal Ltd. (2020)***

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***17 SCC 93 & Surender Kumar Singhal vrs. Arun Kumar Bhalotia, 2021 DHC 1097.***

**7.** The non-obstante Clause as engrafted in Section 5 of 1996 Act used the expression "Judicial Authority". The High Court while exercising the constitutional jurisdiction under Article 226 and 227 of the Constitution of India cannot be restricted as a mere judicial authority and such statutory restrictions cannot withheld the power of High Court to entertain a writ petition, where there is egregious illegality or actions offending judicial conscience, to see that the Courts and Tribunals act within the bounds of their jurisdiction and follow the principles of nature justice.

**8.** In ***Deep Industries Ltd. vrs. Oil and Natural Gas Corporation Ltd. and another, (2020) 15 SCC 706,*** the Hon'ble Supreme Court dealing with the question relating to High Courts exercising jurisdiction under Article 227 of the Constitution of India when it comes to matters that are decided under 1996 Act, have observed as follows:

> **"16.** Most significant of all is the non obstante clause contained in Section 5 which states that notwithstanding anything contained in any other law, in matters that arise under Part I of the Arbitration Act, no judicial authority shall intervene except

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where so provided in this Part. Section 37 grants a constricted right of first appeal against certain judgments and orders and no others. Further, the statutory mandate also provides for one bite at the cherry, and interdicts a second appeal being filed [*see* Section 37(2) of the Act].

**17.** This being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional provision which remains untouched by the non obstante clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us hereinabove so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction."

**9.** In ***National Aluminum Company Ltd. vrs. M/s. Maheswari Brothers Coal Ltd., Special Leave Petition (Civil) Diary No.57336 of 2024, Order dated 15.01.2025,*** the Petitioner approached the Supreme Court directly challenging the order of the District Judge, Khurda passed in Arbitration No.7 of 2023 under Section 37(3) of 1996 Act. The Hon'ble Supreme Court in order dated 15.1.2025 gave liberty to

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the Petitioner to approach the High Court under Article 226 and 227 of the Constitution of India. The relevant portion of the order is reproduced below:-

> "In view of the law laid down by this Court in the case of Deep Industries Ltd. vrs. ONGC, it will be open for the petitioners to invoke jurisdiction of the High Court under Article 226/227 of the Constitution of India for challenging the impugned orders.
>
> We, therefore, dispose of the petition by granting liberty to the petitioners to file proceedings as aforesaid.
>
> It is needless to add that in the event adverse orders are passed in the petition which may be filed by the petitioners under Article 226/227 of the Constitution of India, it will be open for the petitioners to challenge the said orders before this Court in accordance with law."

**10.** The Hon'ble Supreme Court again in ***United India Insurance Company Limited vrs. Odisha Hydra Power Corporation Ltd., SLP(civil) Diary No. 55784 of 2024, Order dated 06.01.2025,*** relying on the case of ***Deep Industries Limited*** *(supra***)** permitted the Petitioner to approach the High Court under Article 226/227 of the Constitution of India. The relevant portion of the order is reproduced below:-

> "When an arbitral award is confirmed in a petition under Section 34 and in an appeal under Section 37 of the Arbitration and Conciliation Act, 1996, even this Court while exercising jurisdiction under Article 136 of the Constitution of India has to

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> be circumspect. As a remedy under Article 226/227 of the Constitution is available to the petitioner to challenge the impugned judgment, we dispose of the Special Leave Petiton by permitted the petitioner to avail the remedy before the High Court under Article 226/227 of the Constitution. In the event, an adverse order is passed in the petition which may be filed by the petitioner under Article 226/227 of the Constitution, it will be always open for the petitioner to challenge the said order before this Court in accordance with law."

**11.** For the discussions made and reasons stated above, and keeping in view the approach of the Hon'ble Supreme Court in *National Aluminum Company Ltd. (supra)* and *United India Insurance Company Limited (supra)*, it would be incorrect to refuse the Petitioners to approach this Court under Article 226 and 227 of the Constitution of India to challenge the order of the District Judge passed under Section 37(1) of 1996 Act. Thus, the preliminary objection raised by the Opposite Parties with regard to maintainability of the writ petitions in terms of Section 37(3) of 1996 Act is overruled.

**12.** It is important to state here that this Court while dealing with the present objection on maintainability of the writ petitions has not touched the boundaries on merit of individual cases and all such questions are left upon to be decided including the merits of each writ petition, either on the question of law or on facts.

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**13**. List all the appeals on 5th October 2026 before regular assigned Bench. Interim orders passed earlier in respective writ petitions shall continue till next date.

***(B.P. Routray)***
***Judge***

*C.R.Biswal/A.R.cum-Sr.Secretary*