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HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 424 of 2015**

- Mahendra Madhukar Lule S/o Madhukar Ramchandra Lule Aged About 54 years R/o Ashirvad Complex, Vaidanath Chowk, Great Nag Road, Nagpur, District Nagpur, Maharashtra

---- **Petitioner****Versus**

1. State of Chhattisgarh Through the Secretary, Department of Transport, Capital Complex, New Raipur, Distt. Raipur, C.G.
2. State Transport Authority, Chhattisgarh, Indravati Bhawan, Capital Complex, New Raipur, Dist. Raipur, C.G.
3. State Transport Authority Maharashtra, Administrative Building, Dr. Ambedkar Udhyan, Bandra East, Mumbai, Maharashtra
4. Secretary, State Transport Authority, Indravati Bhawan, Capital Complex, New Raipur, Dist. Raipur, C.G.
5. State Transport Appellate Tribunal through the Presiding Officer, Mahanadi Khand, DKS Bhawan, Raipur (C.G.)

---- **Respondents****And****WPC No. 428 Of 2015**

- Mahendra Madhukar Lule S/o Madhukar Ramchandra Lule, Aged About 55 years R/o Ashirwad Complex, Vaidanath Chowk, Great Nag Road, Nagpur (Maharashtra)

---- **Petitioner****Vs**

1. State Of Chhattisgarh, Through The Chief Secretary, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur, C.G.
2. State Transport Appellate Tribunal, Chhattisgarh, Ghari Chowk, Raipur (C.G.)
3. State Transport Authority Chhattisgarh, Indravati Bhawan, Mantralaya, Naya Raipur, District Raipur, (C.G.)
4. The Secretary, State Transport Authority Chhattisgarh, Indravati Bhawan, Mantralaya, Naya Raipur, District Raipur, (C.G.)

5. Rais Ahmad (wrongly mentioned as Anis Ahmad) S/o Late Shri Hazi Mohd. Rafique, aged about 52 years, Bus Operator, Purana Bus Stand, City Kotwali, Rajnandgaon (C.G.)

---- Respondents

For Petitioner	:	Shri Sudeep Johri & Shri Shailendra Kumar Bajpai, Advocates
For Respondent/State	:	Shri Sunil Pillai, PL for the State.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board By

10/03/2015

- Both the above writ petitions are directed against the orders passed by the Secretary, State Transport Authority (for short 'the STA'), refusing to put countersignature on the inter State permit granted by the State of Maharashtra in favour of the petitioner.
- Admittedly, the impugned orders have been passed while considering the matter on remand by the State Transport Appellate Tribunal (for short 'the STAT'). When the matter was earlier taken in appeal to the STAT, the petitioner should have preferred an appeal challenging the impugned order.
- In view of the above, the petitioner has remedy of filing appeal before the STAT. The writ petition is not maintainable.
- Learned counsels for the petitioner would submit that the remand was made to the STA, however, the impugned order has been passed by the Secretary and not by the STA, therefore, the order is without jurisdiction. They would place reliance on the decision of the Supreme Court rendered in **Union of India and Others Vs. Tania Construction Private Limited¹, Executive Engineer, Southern Electricity Supply Company of Orissa Limited**

¹(2011) 5 SCC 697

(Southco) and Another Vs. Sri Seetaram Rice Mill² and Committee of Management and Another Vs. Vice-Chancellor and Others³.

5. Once the petitioner exhausted the remedy of appeal in the first round of litigation, he cannot bypass the statutory remedy when the matter has been decided after remand and straightway prefer a writ petition without exhausting the appellate remedy. A litigant having chosen to avail the statutory remedy in the first round of litigation cannot abandon the same when the fresh order is made by the original authority on remand by the appellate authority.
6. Although the petitioner has argued that Secretary has no jurisdiction to pass the order, however, a case directly brought to this Court without exhausting alternative remedy in the first round of litigation would stand on a different footing than the case, like the present one, where the petitioner had availed the alternative remedy earlier in the same litigation. The petitioner may raise the ground of lack of competence of the Secretary before the appellate authority i.e. STAT.
7. Accordingly, both the writ petitions are dismissed with liberty to the petitioner to prefer an appeal before the STAT, which shall be considered and decided within a period of two months from the date of submission of appeal.
8. Certified copy of the impugned orders be returned to the petitioner on supplying xerox copy of the same.

J U D G E

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2(2012) 2 SCC 108

3(2009) 2 SCC 630