

\$~6

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 25th May, 2016

+ W.P.(C) 4757/2016

MAHANAGAR TELEPHONE NIGAM LTD AND ANR

..... Petitioner

Through Mr.Saiful Islam and Mr.Sarfaraz
Khan, Advs.

versus

T.R.K.R. KUMHAR AND ORS Respondents
Through Mr.Puneet Verma, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J (ORAL)

C.M.Nos. 19847-48/2016 (Exemption)

Allowed, subject to all just exceptions.

The applications stand disposed of.

W.P.(C) 4757/2016 & C.M.Nos. 19849/2016 (Stay)

1. Mahanagar Telephone Nigam Limited, impugns order dated 5th May, 2014 passed in O.A.No. 3419/2012 and order dated 21st April, 2016 passed in R.A.No.181/2015.
2. Learned counsel for the respondent has entered appearance on advance notice. With the consent of the counsel, we have taken up the writ petition for hearing.

3. The earlier order dated 5th May, 2014 passed by the Tribunal in O.A.No. 3419/2012 was made subject matter of challenge in W.P.(C) No. 6539/2015 titled as *Mahanagar Telephone Nigam Limited & Ors. vs. T.R.K.R. Kumhar and Ors.* This writ petition was disposed of vide order dated 10th July, 2015, recording:

“Mr. Sinha, learned counsel for the petitioner seeks leave to withdraw the present petition on the ground that the pleas raised by the petitioner with regard to the limitation and resjudicata have not been considered by the tribunal. Without expressing any opinion on the merits of the matter and on the questions of limitation and resjudicata (sic), Writ petition stands dismissed as withdrawn.

In case the review petition is filed within 10 days from today, we hope that the plea of limitation would not come in the way of the review petition.

Order dasti under the signatures of Court Master.”

Consequently, MTNL had filed R.A. No. 181/2015. The second impugned order dated 21st April, 2016 dismisses the review application, *inter alia*, holding that the power of review is limited and confined to the grounds under Order XLVII Rule 1 of the Code of Civil Procedure, read with Section 22 of the Administrative Tribunal Act, 1985. The application for review was beyond the scope and ambit of the aforesaid Order and Section. Observations are also being made on the plea of *res judicata* and limitation, and whether they were specifically raised, for the order under review dated 5th May, 2014 did not refer to the said two pleas.

4. Learned counsel who appears on advance notice states that in view of the order dated 10th July, 2014 and in order to settle and bring the controversy to an end, with their consent the order dated 5th May, 2014 may be set aside and the matter be remanded to the Tribunal for a fresh decision.

We also notice that the order dated 5th May, 2014 does not refer to the starting point for payment of interest.

5. In view of the statement made by the counsel for the respondent, we set aside the impugned order dated 5th May, 2014 with an order of remand to the Tribunal to decide the O.A.No.3419/2012 afresh. Consequently, the order dated 5th May, 2014 is set aside with consent. The order dated 21st April, 2016 passed in the R.A. would not survive.

6. We clarify that it will be open to the respondents to raise all contentions including the plea that principles of *res judicata* and limitation would not arise for consideration, particularly, when the petitioner had agreed to make the payment and the surviving issue pertains to payment of interest.

7. Parties will appear before the Tribunal on 7th July, 2016, when a date of hearing will be fixed. Parties state that they would request the Tribunal to take up the matter expeditiously as a limited issue arises for consideration.

8. The writ petition is disposed of in the above terms. Pending application also stands disposed of. We clarify that we have not expressed any view on merits. The Tribunal would not be influenced by the impugned orders.

SANJIV KHANNA, J

NAJMI WAZIRI, J

MAY 25, 2016

mr