

**Before the Appellate Tribunal for Electricity  
(Appellate Jurisdiction)**

**Appeal No. 234, 235, 211 and 215 of 2012**

**Dated: 7<sup>th</sup> November, 2012**

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson  
Hon'ble Mr. Rakesh Nath, Technical Member**

**In the matter of:**

**Appeal No. 234 of 2012**

**Vodafone India Limited  
Peninsula Corporate Park,  
Ganpatrao Kadam Marg,  
Lower Parel, Mumbai – 400 013**

**...Appellant (s)**

**Vs.**

**1. Maharashtra Electricity Regulatory  
Commission  
World Trade Centre  
Centre No.1, 13<sup>th</sup> Floor,  
Cuffe Parade  
Mumbai – 400 005**

**...Respondent (s)**

**2. Maharashtra State Electricity Distribution  
Company Limited  
Prakashgad,  
Plot no. G-9, Bandra (East)  
Mumbai – 400 051**

**Counsel for the Appellant (s):** Mr. Ramji Srinivasan, Sr. Adv.  
Mr. Sandeep Singh  
Mr. Mahesh Agarwal  
Mr. Rajeev Kumar  
Mr. Shamik Bhatt

**Counsel for the Respondent (s):** Mr. Buddy Ranganadhan  
Mr. Abhishek Mitra

**Appeal No. 235 of 2012**

**Vodafone Cellular India Limited  
1045/1046, Avinashi Road  
Coimbatore – 600 018**

**...Appellant (s)**

**Vs.**

**1. Maharashtra Electricity Regulatory  
Commission  
World Trade Centre  
Centre No.1, 13<sup>th</sup> Floor,  
Cuffe Parade  
Mumbai – 400 005**

**...Respondent (s)**

**2. Maharashtra State Electricity Distribution  
Company Limited  
Prakashgad,  
Plot no. G-9, Bandra (East)  
Mumbai – 400 051**

**Counsel for the Appellant (s):** Mr. Ramji Srinivasan, Sr. Adv.  
Mr. Sandeep Singh  
Mr. Mahesh Agarwal  
Mr. Rajeev Kumar  
Mr. Shamik Bhatt

**Counsel for the Respondent (s):** Mr. Buddy Ranganadhan  
Mr. Abhishek Mitra

**Appeal No. 211 of 2012**

**Bharti Airtel Limited  
Interface Building – 7  
7<sup>th</sup> Floor, Malad Link Road  
Malad (West)  
Mumbai – 400 064**

**...Appellant (s)**

**Vs.**

**1. Maharashtra State Electricity  
Distribution Company Limited  
Prakashgad,  
Plot no. G-9, 5<sup>th</sup> Floor, Bandra (East)  
Mumbai – 400 051**

**...Respondent (s)**

**2. Maharashtra Electricity Regulatory Commission  
World Trade Centre  
Centre No.1, 13<sup>th</sup> Floor,  
Cuffe Parade  
Mumbai – 400 005**

**Counsel for the Appellant (s):** Mr. M.G. Ramachandran  
Mr. Anand K. Ganesan  
Ms. Swapna Seshadri

**Counsel for the Respondent (s):** Mr. Buddy Ranganadhan  
Mr. Akhil Sibal  
Mr. Abhishek Mitra  
Mr. Salim Inamdar

**Appeal No. 215 of 2012**

**Idea Cellular Limited** ... Appellant (s)  
**Suman Towers**  
**Plot No.18, Sector – 11**  
**Gandhinagar – 382 011**

**Vs.**

- 1. Maharashtra Electricity Regulatory Commission** ...Respondent (s)  
**World Trade Centre**  
**Centre No.1, 13<sup>th</sup> Floor,**  
**Cuffe Parade**  
**Mumbai – 400 005**
  
- 2. Maharashtra State Electricity Distribution Company Limited**  
**Prakashgad,**  
**Plot no. G-9, Bandra (East)**  
**Mumbai – 400 051**

**Counsel for the Appellant (s):** Mr. Mihir Joshi, Sr. Adv.  
Mr. Ramji Srinivasan, Sr. Adv.  
Mr. Sandeep Singh  
Mr. Mahesh Agarwal  
Mr. Rajeev Kumar  
Mr. Shamik Bhatt

**Counsel for the Respondent (s):** Mr. Buddy Ranganadhan  
Mr. Akhil Sibal  
Mr. Abhishek Mitra  
Mr. Salim Inamdar

### **ORDER**

These four Appeals have been filed as against the impugned order dated 16.8.2012 passed by Maharashtra Electricity Regulatory Commission approving the Annual Revenue Requirement and determining the Retail Supply Tariff of Maharashtra State Electricity Distribution Co. Ltd. for the FY 2012-13.

2. The Appellants are companies which are engaged in the business of telecommunication to provide voice and data

services to end-consumers. The State Commission is the 1<sup>st</sup> Respondent. MSEDCL, the distribution licensee is the 2<sup>nd</sup> Respondent.

3. The Appellants being aggrieved by the impugned order dated 16.8.2012 passed by the State Commission changing the consumer tariff category of the Appellants from HT/LT Industrial to HT/LT Commercial have filed these Appeals challenging the same on the grounds that the impugned order has been passed even without any proposal in the petition and without any discussion that too without hearing the Appellants.
4. On these grounds, we admitted the Appeals and heard the Learned Counsel for the parties.
5. When we have asked the Learned Counsel for the State Commission as well as the distribution licensee

with regard to the grounds of Appeal, the Learned Counsel for the State Commission fairly admitted that there was no indication by the distribution licensee in the public notice issued to the consumers for change in Appellants' consumer category from Industrial to Commercial in the tariff proposal for the FY 2011-12. He also admitted on our query, the State Commission in the impugned order has not made any discussion over the change in the category of the Appellants and suggested that the matter may be remanded to the State Commission for reconsideration on this issue.

6. Ld. Counsel for the distribution licensee (R-2) though has stated that in the schedule of tariff submitted along with tariff petition to the State Commission, the Appellants were included in commercial category has admitted that the distribution licensee had not given any specific proposal for change in the Appellants' category

either in their petition filed before the State Commission or in the public notice.

7. Ld. Counsel for the Appellants at this stage pointed out that the impugned order has been passed by the State Commission changing their category despite the fact that Mobile Towers was earlier categorised under industrial category. It is further pointed out that the State Commission earlier had rejected the specific proposal made by the distribution licensee to recategorise them from Industrial to Commercial category at the time of fixing the tariff for FY 2009-10 by order dated 17.9.2009.
  
8. Admittedly, in the present case there was not even a proposal from the distribution licensee for the change of categorization in their petition. That apart, the public notice inviting suggestions/objections on the distribution



licensee's petition for ARR/Tariff for the FY 2012-13 and revision in schedule of charges also did not contain any proposal for change in categorisation of Mobile Towers used for telecommunication activity.

9. In spite of this, the impugned order has been passed without any discussion regarding change in the Appellants' category. Though it is pointed out that the tariff schedule attached to the tariff order would indicate Mobile Towers, Micro Wave Towers, Satellite Antennas used for communication activity in the LT/HT Commercial Category there is no specific pleading or proposal in the petition.

10. As indicated by the Learned Counsel for the Appellants, Mobile Towers, etc., prior to passing of the impugned order were categorized under the Industrial category and in fact the State Commission in the tariff order for

the FY 2009-10, rejected the specific proposal of the distribution licensee for change in category from Industrial to Commercial.

11. Despite this, the impugned order dated 16.8.2012 has been passed by the State Commission changing the consumer category of the Appellants into Commercial without any discussion or reasonings and without hearing the Appellants. Thus, we notice that the principles of natural justice have been violated in the present case.
  
12. We, therefore, deem it fit to set aside the portion of impugned order dated 16.8.2012 regarding re-categorisation of Mobile Towers, Micro Wave Towers, Satellite Antennas used for communication activity to HT/LT Commercial Category from HT/LT Industrial

Category prevailing prior to the date of the impugned order. Accordingly the same is set aside.

13. However, the distribution licensee (R-2) is given liberty to file a fresh petition containing the proposal regarding re-categorisation of the Appellants in appropriate tariff category before the State Commission which in turn shall consider the same and pass the appropriate orders in accordance with law after hearing all the concerned parties.
  
14. This order will apply to all the consumers coming under the specified category of telecommunication towers. We must make it clear that we do not want to go into the merits of the matter, and as such we are not giving any opinion on this issue. It is for the State Commission to decide the issue after considering the materials placed

by the parties uninfluenced by the conclusion earlier arrived at.

15. With this observations, all the Appeals are allowed.

However, there is no order as to costs.

16. Pronounced in the open court on this

7<sup>th</sup> day of November, 2012.

(Rakesh Nath)  
Technical Member

(Justice M. Karpaga Vinayagam)  
Chairperson

✓  
REPORTABLE/~~NON-REPORTABLE~~  
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