

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

Appeal No. 107 of 2013 & IA no. 276 of 2013,
Appeal No. 125 of 2013, Appeal No. 126 of 2013
Appeal No. 123 of 2013, Appeal No. 124 of 2013
Appeal No. 135 of 2013 & IA 200 of 2013

Dated: 28th November, 2014

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

In the matters of

Appeal No. 107 of 2013
IA no. 276 of 2013

The Tata Power Co. Ltd.
Bombay House
24, Homi Mody Street
Mumbai – 400 001

.. Appellant(s)

Versus

- 1. Maharashtra State Electricity Regulatory Commission**
World Trade Centre No.1, 13th Floor
Cuffee Parade, Colaba
Mumbai – 400 005
... Respondent(s)
- 2. Reliance Infrastructure Ltd.**
Reliance Energy Centre
Santa Cruz (East)
Mumbai – 400 055
- 3. Government of Maharashtra**
Prakashgad (MSEB) Building

**Plot No. G-9, Bandra (E)
Mumbai – 400 051
(Through Principal Secretary(Energy))**

- 4. Government of Maharashtra
Mantralaya, Madam Cama Road
Nariman Point
Mumbai – 400 032
(Through Principal Secretary(Fianance))**
- 5. Government of Maharashtra
Mantralaya, Madam Cama Road
Nariman Point
Mumbai – 400 032
(Through Principal Secretary(Planning))**
- 6. Brihanmumbai Electric Supply and Transport
Undertaking (BEST)
BEST Bhavan
BEST Marg, P.O. Box No. 192
Mumbai – 400 001**

Counsel for the Appellant (s) : **Mr. Ramji Srinivasan, Sr. Adv.
Mr. Krishnan Venugopal, Sr. Adv.
Ms. Prerna Priyadarshini
Mr. Avijeet Kumar Lala
Mr. Vishal Anand
MR. Akshat Jain
Ms. Sara Sundaram
Mr. Zafar Alam
Ms. Kanika chugh
Ms. Anusha Nagarajan
Mr. Anand Kumar Srivastava**

Counsel for the Respondent(s): **Mr. J.J. Bhatt, Sr. Adv.
Mr. Parag Tripathi, Sr. Adv.
Ms. Anjali Chandurkar**

Mr. Buddy A. Ranganadhan
Mr. Arijit Maitra
Mr. Raunak Jain
Mr. Hasan Murtaza
Ms. Swapna Seshadri (Intervenor)

Appeal No. 125 of 2013

- 1. Indian Hotel & Restaurant Association ... Appellant(s)**
B-2, Wadala Shriram Industrial Estate
Ground Floor, G.D. Ambedkar Marg
Wadala, Mumbai – 400 031

- 2. Hotel and Restaurant Association**
Western India, Candy House,
1st Floor, Mandlik Road
Colaba, Mumbai – 400 001

Versus

- 1. Maharashtra State Electricity Regulatory ... Respondent(s)**
Commission
World Trade Centre No.1, 13th Floor
Cuffee Parade, Colaba
Mumbai – 400 005

- 2. Reliance Infrastructure Ltd.**
Reliance Energy Centre
Santa Cruz (East)
Mumbai – 400 055

- 3. The Tata Power Co. Ltd. (Distribution)**
Bombay House
24, Homi Mody Street
Mumbai – 400 001

4. **Government of Maharashtra
Prakashgad (MSEB) Building
Plot No. G-9, Bandra (E)
Mumbai – 400 051
(Through Principal Secretary(Energy))**
5. **Government of Maharashtra
Mantralaya, Madam Cama Road
Nariman Point
Mumbai – 400 032
(Through Principal Secretary(Fianance))**
6. **Government of Maharashtra
Mantralaya, Madam Cama Road
Nariman Point
Mumbai – 400 032
(Through Principal Secretary(Planning))**
7. **Brihanmumbai Electric Supply and Transport
Undertaking (BEST)
BEST Bhavan
BEST Marg, P.O. Box No. 192
Mumbai – 400 001**

**Counsel for the Appellant (s) : Ms. Shikha Ohri
Ms. Megha Aggarwal**

**Counsel for the Respondent(s): Mr. J.J. Bhatt, Sr. Adv.
Mr. Parag Tripathi, Sr. Adv.
Ms. Anjali Chandurkar
Mr. Buddy A. Ranganadhan
Mr. Arijit Maitra
Mr. Raunak Jain
Mr. Hasan Murtaza
Mr. Sitiesh Mukherjee**

Mr. Sakya Singh Chaudhuri
Ms. Prerna Priyadarshini

Appeal No. 126 of 2013

Bharti Airtel Limited
Interface Building – 7
7th Floor, Malad Link Road
Malad (West)
Mumbai – 400 064

Versus

- 1. Maharashtra State Electricity Regulatory Commission ... Respondent(s)**
World Trade Centre No.1, 13th Floor
Cuffee Parade, Colaba
Mumbai – 400 005
(Through Secretary)
- 2. Reliance Infrastructure Ltd.**
Reliance Energy Centre
Santa Cruz (East)
Mumbai – 400 055
(Through Company Secretary)
- 3. Government of Maharashtra**
Prakashgad (MSEB) Building
Plot No. G-9, Bandra (E)
Mumbai – 400 051
(Through Principal Secretary(Energy))
- 4. Government of Maharashtra**
Mantralaya, Madam Cama Road
Nariman Point
Mumbai – 400 032
(Through Principal Secretary(Fianance))

5. **Government of Maharashtra
Mantralaya, Madam Cama Road
Nariman Point
Mumbai – 400 032
(Through Principal Secretary(Planning))**
6. **The Tata Power Co. Ltd.
Bombay House
24, Homi Mody Street
Mumbai – 400 001**
7. **Brihanmumbai Electric Supply and Transport
Undertaking (BEST)
BEST Bhavan
BEST Marg, P.O. Box No. 192
Mumbai – 400 001**

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

**Counsel for the Respondent(s): Mr. J.J. Bhatt, Sr. Adv.
Mr. Parag Tripathi, Sr. Adv.
Ms. Anjali Chandurkar
Mr. Buddy A. Ranganadhan
Mr. Arijit Maitra
Mr. Raunak Jain
Mr. Hasan Murtaza
Mr. Sitesh Mukherjee
Mr. Sakya Singh Chaudhuri
Ms. Prerna Priyadarshini**

Appeal No. 123 of 2013

Shopping Centers Association of India ... Appellant(s)
(SCAI) Ltd.
S-21, Okhla Industrial Estate
Phase 2, New Delhi – 110 020

Versus

- 1. Maharashtra State Electricity Regulatory Commission ... Respondent(s)**
World Trade Centre No.1, 13th Floor
Cuffee Parade, Colaba
Mumbai – 400 005
(Through Secretary)
- 2. Reliance Infrastructure Ltd. (RInfra)**
H Block, 1st Floor, Dhirubhai Ambani
Knowledge City
Navi Mumbai – 400 710
- 3. The Tata Power Co. Ltd.**
Bombay House
24, Homi Mody Street
Mumbai – 400 001

Counsel for the Appellant (s) : **Mr. M.G. Ramachandran**
Mr. Shikhil Suri
Mr. Ankit Gupta

Counsel for the Respondent(s): **Mr. J.J. Bhatt, Sr. Adv.**
Mr. Parag Tripathi, Sr. Adv.
Ms. Anjali Chandurkar
Mr. Buddy A. Ranganadhan
Mr. Arijit Maitra
Mr. Raunak Jain
Mr. Hasan Murtaza

Mr. Sitesh Mukherjee
Mr. Sakya Singh Chaudhuri
Ms. Purna Priyadarshini

Appeal No. 124 of 2013

Retailers Association of India ... Appellant(s)
111/112, Ascot Centre Sajar Road
Andhri (East), Mumbai – 400 051

Versus

- 1. Maharashtra State Electricity Regulatory Commission** ... Respondent(s)
World Trade Centre No.1, 13th Floor
Cuffee Parade, Colaba
Mumbai – 400 005
- 2. Reliance Infrastructure Ltd.**
Reliance Energy Centre
Santa Cruz (East)
Mumbai – 400 055
- 3. The Tata Power Co. Ltd. (Distribution)**
Bombay House
24, Homi Mody Street
Mumbai – 400 001

Counsel for the Appellant (s) : Mr. M.G. Ramachandran
Mr. Shikhil Suri
Mr. Ankit Gupta

Counsel for the Respondent(s): Mr. J.J. Bhatt, Sr. Adv.
Mr. Parag Tripathi, Sr. Adv.
Ms. Anjali Chandurkar

Mr. Buddy A. Ranganadhan
Mr. Arijit Maitra
Mr. Raunak Jain
Mr. Hasan Murtaza
Mr. Sitesh Mukherjee
Mr. Sakya Singh Chaudhuri
Ms. Prerna Priyadarshini

Appeal No. 135 of 2013 & IA 200 of 2013

MIDC Moral Industries Association ... Appellant(s)
MIDC Marol Industries Association
Plot No. P-15, Street No.14
MIDC, Marol, Andheri (E)
Mumbai – 400 093

Versus

- 1. Maharashtra State Electricity Regulatory Commission** ... Respondent(s)
World Trade Centre No.1, 13th Floor
Cuffee Parade, Colaba
Mumbai – 400 005
- 2. Reliance Infrastructure Ltd.**
Reliance Energy Centre
Santa Cruz (East)
Mumbai – 400 055
- 3. Government of Maharashtra**
Prakashgad (MSEB) Building
Plot No. G-9, Bandra (E)
Mumbai – 400 051
(Through Principal Secretary(Energy))

4. **Government of Maharashtra
Mantralaya, Madam Cama Road
Nariman Point
Mumbai – 400 032
(Through Principal Secretary (Finance))**
 5. **Government of Maharashtra
Mantralaya, Madam Cama Road
Nariman Point
Mumbai – 400 032
(Through Principal Secretary(Planning))**
 6. **The Tata Power Co. Ltd.
Bombay House
24, Homi Mody Street
Mumbai – 400 001**
 7. **Brihanmumbai Electric Supply and Transport
Undertaking (BEST)
BEST Bhavan
BEST Marg, P.O. Box No. 192
Mumbai – 400 001**
- Counsel for the Appellant (s) : Mr. Anand K. Ganesan
Ms. Mandakini Ghosh**
- Counsel for the Respondent(s): Mr. J.J. Bhatt, Sr. Adv.
Mr. Parag Tripathi, Sr. Adv.
Ms. Anjali Chandurkar
Mr. Buddy A. Ranganadhan
Mr. Arijit Maitra
Mr. Raunak Jain
Mr. Hasan Murtaza
Mr. Sitiesh Mukherjee
Mr. Sakya Singh Chaudhuri
Ms. Prerna Priyadarshini**

JUDGMENT

RAKESH NATH, TECHNICAL MEMBER

These Appeals have been filed by Tata Power Company and various Association of Consumers and Consumers challenging the impugned order dated 10.05.2013 passed by the Maharashtra Electricity Regulatory Commission (“State Commission”) in case no. 3 of 2013 determining the Cross Subsidy Surcharge (“CSS”) for the period from 10.05.2013 payable by the consumers availing supply from Tata Power using the wires of Reliance Infrastructure Ltd., hereinafter referred to as changeover consumers.

2. The Respondent no.1 is the State Commission. Reliance Infrastructure Ltd. (“RInfra”), the distribution Licensee is the Respondent no.2.
3. The brief facts of the case are as under:

- (a) The Appellant, Tata Power Company (“Tata Power”) and Reliance Infrastructure Company (“RInfra”), the Respondent have distribution License for supply of electricity in South Mumbai with part of common licensed area.
- (b) On 15.10.2009, the State Commission passed an order in case no. 50 of 2009 filed by Tata Power, formulating an arrangement for changeover of consumers i.e. where a consumer connected to RInfra’s network could take power from Tata Power on the network of RInfra and vice versa.
- (c) RInfra filed a petition being case no. 72 of 2010 for truing-up for FY 2008-09, Annual Performance Review for FY 2009-10 and Tariff determination for FY 2010-11. In the said petition, RInfra sought Cross Subsidy Surcharge (‘CSS’) to be imposed on the consumers who had migrated from RInfra to Tata Power for availing supply.
- (d) On 29.07.2011, the State Commission passed an order in case no. 72 of 2010 granting an in-principle approval for

imposition of CSS on the consumers receiving supply from Tata Power through the RInfra's network (changeover consumers). The State Commission, however, did not determine the computation of CSS.

- (e) Tata Power and several consumers challenging the order dated 29.07.2011 imposing CSS on changeover consumers before this Tribunal by way of Appeal no. 132 of 2011 and batch.
- (f) On 09.09.2011 the State Commission passed an order in case no. 43 of 2010 computing the CSS for all Distribution Licensees.
- (g) The above order dated 09.09.2011 was challenged by RInfra in Appeal no. 178 of 2011 before this Tribunal assailing the computation of CSS.
- (h) RInfra filed a petition for approval of ARR and tariff for FY 2011-12 being case no. 180 of 2011 before the State Commission. In this petition RInfra sought revision of CSS.

However, the State Commission by order dated 15.06.2012 declined to determine the CSS in view of the pendency of Appeal no. 178 of 2011 before the Tribunal. RInfra filed an Appeal before this Tribunal being Appeal no. 160 of 2012 against the above order dated 15.06.2012, *inter alia* challenging non-revision of CSS.

- (i) On 21.12.2012, this Tribunal in Appeal no. 132 of 2011 and batch upheld the validity of imposition of CSS on changeover consumers.
- (j) On 07.01.2013, RInfra filed a petition being case no. 3 of 2012 before the State Commission, seeking fresh determination of CSS based on the values approved by order dated 15.06.2012 in case no. 180 of 2011, i.e. the approved values for FY 2011-12. Tata Power objected to revision of CSS in case no. 3 of 2013 as Appeal no. 178 of 2011 was still pending before the Tribunal.

- (k) On 15.01.2013, RInfra filed case no. 9 of 2013, being the MYT Petition for the control period from FY 2012-13 to FY 2015-16 wherein it sought increase in CSS.
- (l) On 07.02.2013, the State Government through a letter to the State Commission conveyed its views stating that the CSS issue may be delinked from the roadmap to reduce cross subsidy and that the roadmap would be decided after due consultation in a period of 3 months.
- (m) On 19.02.2013, the State Commission issued public notice in RInfra's MYT petition including the increase in CSS. The State Commission convened public hearing and reserved orders in MYT Petition.
- (n) After reserving orders in the MYT petition, the State Commission passed the impugned order dated 10.05.2013 in case no. 3 of 2013 whereby it has determined CSS on the basis of tariff for FY 2011-12 and considering the values

approved in respect of power purchase costs by order dated 15.06.2012 in case no. 180 of 2011.

(o) Aggrieved by the impugned order dated 10.05.2013, Tata Power and various Consumers/Consumer Associations have filed these Appeals.

4. On 21.06.2013, this Tribunal passed an interim order in the Interlocutory Applications filed by the Appellants granting stay of the impugned order and to maintain status-quo. In the interim order this Tribunal held that the jurisdiction of the State Commission to fix the CSS through the impugned order dated 10.05.2013 revising CSS fixed on 15.06.2012 can not be questioned and decided at that stage, but felt that there were no circumstances shown in the impugned order as to why the State Commission was constrained to decide the issue in question hurriedly, when the same was pending before the State Commission in MYT petition as well as this Tribunal in Appeal no. 178 of 2012.

5. It is pertinent to point out that on 22.08.2013, the State Commission has passed MYT order in case no. 9 of 2013 in which it has determined the CSS for RInfra with effect from 01.09.2013. This MYT order has been challenged by Tata Power and the some consumers in Appeal no. 294 of 2013 and batch. The Tribunal has also rendered judgment dated 02.12.2013 in Appeal no. 178 of 2013 in which the Tribunal accepted the submissions made by RInfra with regard to the manner of computation of “T” and “C” in the formula for CSS but did not direct the State Commission to work out CSS afresh from the date of migration. This judgment has been challenged by RInfra in the Hon’ble Supreme Court.
6. By the impugned order the State Commission has determined the CSS from the date of the order i.e. 10.05.2013. The State Commision has determined CSS in MYT order dated 22.8.2013 with effect from 01.09.2013.
Therefore, what remains to be decided in the present

Appeal is this “whether the CSS determined in the impugned order is valid to be made applicable for the period from 10.05.2013 to 31.08.2013?”

7. The Appellants have raised the following issues.

i) Violation of the principles of Natural Justice:

The State Commission by way of the impugned order amended the tariff order dated 15.06.2012 passed in case no. 180 of 2012. The State Commission failed to comply with the mandatory procedure specified under Section 64 of the Electricity Act, 2003. The State Commission in case no. 180 of 2011 refrained from taking any view on the issue of CSS computation and merely retained CSS at the same levels as determined by order dated 09.09.2011 in case no. 43 of 2010 in view of the pendency of Appeal no. 132 of 2011 and batch and Appeal no. 178 of 2011 before this Tribunal on the issue of computation of CSS. Accordingly, the Commission

did not deem it necessary to consider the objections raised by Tata Power and the consumers on the issue of CSS.

ii) CSS determined contrary to the Law:

It is trite law that CSS cannot be determined de hors the tariff and has to be determined alongwith the tariff determination process. The CSS can only be levied for meeting the current level of cross subsidy and current level of subsidy can only be determined when the tariff is determined for that particular period. Therefore, even if only CSS has to be revised the same could be done after the amendment of the tariff order. The determination of CSS is alone contrary to the Regulation 13.1 which requires CSS to be based on the current level of cross subsidy prevailing in the particular year. The impugned order has resulted in astronomical and unprecedented increase in CSS payable to RInfra by changeover consumers leading to a tariff shock to such consumers and will have effect of discouraging competition

and consumer choice in relation to more efficient source of supply of electricity. The State Commission proceeded to decide case no. 3 of 2013 despite the fact that Appeal no. 178 of 2011 was still pending before this Tribunal. Therefore, whether the State Commission can proceed to adopt figures of previous years for computation of CSS for subsequent periods which was pending decision before the Tribunal. Appeal no. 178 of 2011 has since been decided by this Tribunal and the impugned order falls foul of the principles elaborated therein in relation to the procedure for determination of CSS.

8. R'Infra, the Respondent, has submitted as follows:
 - a) There is no violation of the principles of natural justice as while passing order dated 15.06.2012 in case no. 180 of 2011, public notices were duly issued and the procedure was duly followed. The objections were received pursuant to the public notice and were duly recorded in the order dated

15.06.2012. However, the State Commission in view of pendency of Appeal no. 132 of 2011 and batch decided to retain the CSS at the existing level as approved in order dated 09.09.2011 in case no. 43 of 2010. Thus, the entire process of public hearing was duly completed but the State Commission deferred the mathematical calculations of CSS in view of pendency of the issue of CSS before the Tribunal. Appeal no. 132 of 2011 on the question of legality of level of CSS on changeover consumers was disposed of on 27.12.2012 by the Tribunal. In view of this Appeal, RInfra approached the State Commission for calculation of CSS as the entire process was completed and only the mathematical calculation had to be carried out. All the elements of formula for CSS have been determined in the tariff order dated 15.06.2012. Thus, no public hearing was required to be held in the said issue.

- b) The State Commission has specifically considered this issue of current level of cross subsidy. In case the determination of tariff order for any particular year is delayed and does not come into effect on the 1st April of such year the CSS determined in the previous year continues to remain in force from 1st April of new financial year.
9. On the above issues we have heard Shri Ramji Srinivsan, Learned Senior Counsel for Tata Power, Shri J.J. Bhatt, Learned Senior Counsel for RInfra, Shri Buddy A. Ranganadhan, Learned Counsel for the State Commission and Shri M.G. Ramachandran and Shri Anand K. Ganesan, Learned Counsel for Appellants/Consumers.
10. Keeping in view the rival contentions of the parties, the following issues arise for our consideration.
- i) **Whether the State Commission has not followed the principles of natural justice in passing the impugned order?**

ii) Whether the cross subsidy surcharge determined by the State Commission is contrary to law?

11. Let us examine the first issue regarding principles of natural justice.

12. We find that the State Commission in its order dated 15.06.2012 in case no. 180 of 2011 did not compute the CSS and decided to retain the CSS as determined in the order dated 09.09.2011 in case no. 43 of 2010 on the ground that certain proceedings were pending before the Tribunal in Appeal nos. 132 of 2011 & batch in relation to determination of CSS. The State Commission did not decide that it would determine the CSS later. On the other hand it decided to retain the CSS as determined earlier. In the impugned order the State Commission determined CSS by formula given in the Tariff Policy using the values of the components of formula from the tariff order dated 15.06.2012 passed in case no. 180 of 2011. The State commission did not give

any public notice on the proposal of RInfra. The State Commission, however, made Tata Power and BEST, the other Distribution Licensees, as parties to the proceedings.

13. The State Commission in the order dated 15.06.2012 in case no. 180 of 2011 had decided to retain CSS at the existing level as approved by order dated 09.09.2011 in case no. 43 of 2010. As the state Commission decided to determine the CSS in the petition filed by RInfra in case no. 3 of 2013, it has revised its earlier decision in order dated 15.06.2012 of retaining the CSS at the level decided in case no. 43 of 2010.
14. The objectors in the proceedings in case no. 180 of 2011 had raised a number of objections regarding CSS. The State Commission has not dealt with the objections either in the order dated 15.06.2012 or in the impugned order dated 10.05.2013.

15. In view of above, we feel that the State Commission should have given public notice and invited suggestions and objections to the proposal of RInfra for computing CSS as per the tariffs and power purchase cost, loss level and wheeling charges approved in tariff order dated 15.06.2012.
16. The Open Access Regulations also required the Distribution Licensee to submit the methodology for computing current level of cross subsidy to the State Commission along with full details of calculation for each financial year along with its application for determination of tariff. First proviso to Regulations 13.5 provides that the Distribution Licensee shall provide to any person the copies of documents and papers made available to the Commission relating to the proposed such calculation and/or place such calculations on the website of the Distribution Licensee for making comments/suggestions to the Commission.

17. We feel that the State Commission should have followed the procedure under Section 64 of the Act and given public notice to invite the suggestions and objections of the public. The impugned order has been passed in violation of the principles of natural justice, the provisions of the Act and the Regulations. Accordingly the first issue is decided in favour of the Appellants.
18. The second issue is regarding the validity of CSS determined by the State Commission.
19. We find that the State Commission has used the formula for CSS as per the Tariff Policy. There is no dispute regarding the formula used. The Tribunal in judgment dated 02.12.2013 in Appeal no. 178 of 2011 has also upheld the validity of the formula as per Tariff Policy for determination of CSS. Therefore, the formula used in the impugned order is correct.

20. We find that the State Commission has used the components of the Tariff viz., tariff payable by the relevant category of consumers, weighted average cost of power purchase of top 5% at margin excluding liquid fuel based generation and renewable energy, wheeling charges and system losses for the applicable voltage level as per the values approved in the order dated 15.06.2012 in case no. 180 of 2011 for the FY 2011-12. However, these parameters were determined for the FY 2011-12. No fresh determination for these parameters were made for the FY 2013-14 (May to August 2013) for which CSS has been determined. When there was no fresh determination of tariff and power purchase cost, how the CSS could have been re-determined?
21. Let us now examine the Open Access Regulations, 2005.
22. Current level of cross subsidy is defined as under:

“Current level of cross subsidy means for each financial year, for each approved tariff category and/or tariff sub-category of the Distributions Licensee, and/or for each tariff slab with each such tariff category/sub-category, the difference between the approved revenue from the sale of electricity for such financial year, for each such tariff category/sub-category/tariff slab and the approved cost of supply of electricity to such tariff category/sub-category/tariff slab, where such different is a positive value.”

23. Regulation 13.1 provides that cross subsidy surcharge shall be based on the current level of cross subsidy.
24. Regulation 13.5 stipulates that the Distribution Licensee shall for each financial year submit full details of the calculation of the current level of cross subsidy together with its application for determination of tariff submitted to the Commission in accordance with the provisions of clause (d) of sub-Section (1) of Section 62 of the Act.
25. Thus, the CSS has to be determined by the State Commission every year along with determination of tariff for computing the current level of cross subsidy.

26. In judgment dated 02.12.2013 in Appeal no. 178 of 2011, this Tribunal found fault with the methodology adopted by the State Commission in calculating the average billing rate for various categories by using the actual sale for the previous year. The Tribunal also did not allow re-determination of the CSS retrospectively. The findings of the Tribunal in Appeal no. 178 of 2011 also would apply to this case.
27. In the impugned order, the State Commission has determined the CSS for first quarter of FY 2013-14 w.e.f. 10.05.2013. The CSS should have been determined along with determination of ARR and tariff for the FY 2013-14. In the present case, the State Commission re-determined CSS based on the order dated 15.06.2012 determining the tariff for FY 2011-12. The State Commission has also determined the CSS in the MYT tariff order dated 22.08.2013 for the control period FY 2013-14 to FY 2015-16 with effect from

01.09.2013. Therefore, the CSS determined in the impugned order from 10.05.2013 onwards (FY 2013-14) is not valid in law.

28. However, RInfra should not be made to suffer financially due to the reason that the State Commission did not determine the CSS as per the formula of Tariff Policy in its earlier order dated 15.06.2012 and its expenses should be allowed in the true-up of its accounts as per law.

29. Summary of our findings:

(i) We feel that State Commission should have followed the procedure under Section 64 of the Act and given public notice to invite the suggestions and objections of the public. The impugned order has been passed in violation of the principles of Natural Justice, the provisions of the Act and the Regulations. Accordingly the first issue is decided in favour of the Appellants.

(ii) The CSS determined by the State Commission in the impugned order with effect from 10.05.2013 based on the tariff order dated 15.06.2012 is not valid in law. However, Rlnfra should not be made to suffer financially due to the reason that the State Commission did not determine the CSS as per the formula of Tariff Policy in its earlier order dated 15.06.2012. However, its expenses should be allowed in the true-up of its accounts as per law.

29. In view of above the Appeals are allowed and the impugned order is set aside. No order as to costs.

30. Pronounced in the open court on this 28th day of November, 2014.

(Rakesh Nath)
Technical Member

√

(Justice M. Karpaga Vinayagam)
Chairperson

REPORTABLE/NON-REPORTABLE

mk