

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

**APPEAL NO. 153 OF 2008  
I. A. NO 192 OF 2008 & I. A. NO. 115 OF 2009**

Dated: 23<sup>rd</sup> April, 2009

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

**IN THE MATTER OF:**

**Poona Hospital & Research Centre ... Appellant (s)  
Versus  
Maharashtra Electricity Regulatory Commission & Anr. ... Respondent (s)**

**APPEAL NO. 154 OF 2008  
I. A. No 194 OF 2008 & I. A. NO. 112 OF 2009**

**IN THE MATTER OF:**

**Maharashtra Medical Foundation ... Appellant (s)  
Versus  
Maharashtra Electricity Regulatory Commission & Anr. ... Respondent (s)**

**APPEAL NO. 155 OF 2008  
I. A. NO 197 OF 2008 & I. A. NO. 111 OF 2009**

**IN THE MATTER OF:**

**Jahangir Hospitals ... Appellant (s)  
Versus  
Maharashtra Electricity Regulatory Commission & Anr. ... Respondent (s)**

**APPEAL NO. 156 OF 2008  
I. A. NO 199 OF 2008 & I. A. NO. 110 OF 2009**

**Kokan Mitra Mandal Medical Trust ... Appellant (s)  
Versus  
Maharashtra Electricity Regulatory Commission & Anr. ... Respondent (s)**

**APPEAL NO. 157 OF 2008**  
**I. A. NO 201 OF 2008 & I. A. 117 OF 2009**

**IN THE MATTER OF:**

Lata Mangeshkar Medical Foundation,  
Deenanath Mangeshkar Hospital & Research ... Appellant (s)  
Versus  
Maharashtra Electricity Regulatory Commission & Anr. ... Respondent (s)

**APPEAL NO. 158 OF 2008**  
**I. A. NO. 203 OF 2008 & I. A. NO. 116 OF 2009**

**IN THE MATTER OF:**

Hastimal Sancheti Memorial Trust ... Appellant (s)  
Versus  
Maharashtra Electricity Regulatory Commission & Anr. ... Respondent (s)

**APPEAL NO. 159 OF 2008**  
**I. A. NO. 205 OF 2008 & I. A. NO. 109 OF 2009**

**IN THE MATTER OF:**

Sadhu Vaswani Missions Medical Complex  
Inlak & Budhrani Hospital ... Appellant (s)  
Versus  
Maharashtra Electricity Regulatory Commission & Anr. ... Respondent (s)

**APPEAL NO. 161 OF 2008**  
**I. A. NO. 210 OF 2008 & I. A. NO. 108 OF 2009**

**IN THE MATTER OF:**

Grant Medical Foundation ... Appellant (s)  
Versus  
Maharashtra Electricity Regulatory Commission & Anr. ... Respondent (s)

**APPEAL NO. 164 OF 2008**  
**I. A. NO. 215 OF 2008 & I. A. NO. 119 OF 2009**

**IN THE MATTER OF:**

KEM Hospital Society ... Appellant (s)  
Versus  
Maharashtra Electricity Regulatory Commission & Anr. ... Respondent (s)

**APPEAL NO. 166 OF 2008**  
**I. A. NO. 219 OF 2008 & I. A. NO. 120 OF 2009**

**IN THE MATTER OF:**

Ashwini Sahakari Rugnalaya Ani ... Appellant (s)  
Sanshodhan Kendra Niyamit  
Versus  
Maharashtra Electricity Regulatory Commission & Anr. ... Respondent (s)

**APPEAL NO. 167 OF 2008**  
**I. A. NO. 221 OF 2008 & I. A. NO. 122 OF 2009**

**IN THE MATTER OF:**

N. M. Wadia Institute of Cardiology ... Appellant (s)  
Versus  
Maharashtra Electricity Regulatory Commission & Anr. ... Respondent (s)

**APPEAL NO. 168 OF 2008**  
**I. A. NO. 223 OF 2008 & I. A. NO. 121 OF 2009**

**IN THE MATTER OF:**

Aditya Birla Foundation Trust ... Appellant (s)  
Versus  
Maharashtra Electricity Regulatory Commission & Anr. ... Respondent (s)

**APPEAL NO. 170 OF 2008**  
**I. A. NO. 228 OF 2008 & I. A. NO. 123 OF 2009**

**IN THE MATTER OF:**

Jana Prabodhine Medical Trust Sanjeevan Hospital ... Appellant (s)  
Versus  
Maharashtra Electricity Regulatory Commission & Anr. ... Respondent (s)

**APPEAL NO. 177 OF 2008**  
**I. A. No 241 OF 2008 & I. A. NO. 114 OF 2009**

**IN THE MATTER OF:**

Osho International Foundation ... Appellant (s)  
Versus  
Maharashtra Electricity Regulatory Commission & Anr. ... Respondent (s)

**APPEAL NO. 178 OF 2008**  
**I. A. No 243 OF 2008 & I. A. NO. 113 OF 2009**

**IN THE MATTER OF:**

Meo Sanyas Foundation ... Appellant (s)  
Versus  
Maharashtra Electricity Regulatory Commission & Anr. ... Respondent (s)

Counsel for the Appellant/ (s) : Mr. Sitiesh Mukherjee  
Mr. Vishal Anand  
Mr. Sudeep Nargolker  
Ms. Megha Sen

Counsel for the Respondent (s): Mr. Varun Agarwal for MSEDCL  
Mr. Buddy A. Ranganadhan for Resp. 1

**Judgment**

**Per Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson**

1. The Appellants in these Appeals are the Hospitals. Separate Appeals have been filed by the respective Hospitals before this Tribunal challenging the impugned order dated 20.06.2008 passed by the Maharashtra State

Commission. This order was passed by the State Commission on the application filed by the State Electricity Distribution Co. Ltd., Respondent No. 2, for fixing of tariff in respect of their business of distribution for the financial year 2008-09.

2. Since these Appeals would relate to the various hospitals being aggrieved over the common impugned order dated 20.06.2008, all these appeals have been taken up and heard together and common order is being passed.

3. Mr. Sitesh Mukherjee, the learned counsel for the Appellants in all these appeals while assailing the impugned order dated 20.06.2008 would contend that all the Appellants who are carrying on activity of charitable hospital establishment giving charitable treatment to the financially and socially underprivileged, and who cannot be compared with other commercial consumers such as shops, malls, hotels etc. are seriously prejudiced over the impugned order dated 20.06.2008 mainly because there is a blatant change in the tariff design; the apparent violation of the principles of natural justice in re-categorisation of the Appellants by placing them in a new category namely HT-II Commercial and the exorbitant rise in the cross subsidy charges without giving any opportunity to the Appellants to make their submissions before deciding the same.

4. It is also contended that if the Appellants have been given opportunity by the Commission to place their case by producing the materials to show that the Commission cannot introduce completely a new tariff design in the process of modification of the tariff design and cannot place them in a new category, they would have been able to convince the Commission that the tariff design need not be changed and that they cannot be put into a new category of HT-II Commercial.

5. Mr. Sitesh Mukherjee, the learned counsel for the Appellants requests this Tribunal to set aside the impugned order and remand the matter to the Respondent Commission to enable the Appellants to appear before the Commission and place their case with the materials to convince the State Commission to pass the appropriate orders in respect of the points referred to above.

6. The learned counsel for the Appellant has filed a memo referring to the points broadly on the basis of which the remand is sought for. The crux of the points raised by the learned counsel for the Appellants are as follows:

- (a) Proper notice was not issued by the Distribution Company Respondent No. 2 regarding any change in tariff design which is contrary to Section 64(2) of the Electricity Act, 2003.
- (b) No notice was given for re-categorisation of the Appellant and similarly placed consumers into new category, i.e., HT-II Commercial.
- (c) The Appellant has been wrongly placed in HT-II Commercial category along with the shopping malls and multiplexes.
- (d) The Appellant is aggrieved by the inordinate increase in the tariff by nearly 80% in the financial year 2008-09 thereby causing tariff shock.
- (e) The cross-subsidy payable by the Appellant under the impugned tariff comes to about 103.31% which is contrary to settled principles law, Tariff Policy and is excessive and exorbitant by any standards.
- (f) The Respondent Commission has not assigned the reasons for creating a new category with high tariff and placing the Appellant and similar consumers in such a high tariff category in the entire tariff order.

7. On these points we have heard the counsel for the Appellants as well as counsel for the Distribution Company and the Commission. As we find that

the Appellants were not heard by giving an opportunity to them before deciding the issues in respect of change in tariff design, re-categorisation by introducing a new category and in respect of the increase in cross-subsidy charges, we deem it appropriate to remand the matter to the Commission so that the Commission can decide these issues after giving opportunity to all the Appellants to place their case before the Commission by allowing them to produce the materials for substantiating their plea.

8. The learned counsel for the Appellant has filed the memo giving undertaking to the effect that without prejudice to the rights and contentions of the Appellants, they will continue to pay the tariff determined by the Respondent Commission in the impugned order subject to adjustments w.e.f. 01.06.2008 according to the final determination of the tariff of the Appellant. This undertaking is recorded.

9. Accordingly, the impugned order is set aside and the matter is remanded to the Commission. The Commission is directed to give opportunity to all the Appellants to give the fresh consideration to the points raised by the Appellants and come to its conclusion on the basis of the materials available on record and in accordance with law. This exercise may be completed within 8 weeks from the date of the receipt of this Order. It is made clear that this Judgment would apply to the Appellants only. With these directions, all these Appeals are allowed.

**(A.A. Khan)**  
**Technical Member**

**(Justice M. Karpaga Vinayagam)**  
**Chairperson**

Dated: 23<sup>rd</sup> April, 2009

Reportable / Non-reportable