

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

**I.A. No. 179 of 2013**  
**IN**  
**Appeal No.107 of 2013**

**Dated: 21<sup>st</sup> June,2013**

**Present : HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM,  
CHAIRPERSON  
HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER**

**In the Matter of:**

**Tata Power Co. Ltd.,  
Bombay House  
24, Homi Mody Street,  
Mumbai-400 001.**

**...Applicant/Petitioner**

**Versus**

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

- 4. Government of Maharashtra  
Through Principal Secretary(Finance)  
Mantralaya, Madam Cama Road,  
Nariman Point,  
Mumbai-400032.**
  
- 5. Government of Maharashtra  
Through Principal Secretary(Planning)  
Mantralaya, Madam Cama Road,  
Nariman Point,  
Mumbai-400032.**
  
- 6. Brihanmumbai Electric Supply and Transport  
Undertaking(BEST)  
BEST Bhavan  
BEST Marg, P.O. Box No.192  
Mumbai-400 001.**

**...Respondent(s)**

Counsel for the Applicant (s) : Mr. Krishnan Venugoapl, Sr. Adv.  
Mr. Sitiesh Mukherjee  
Mr. Sakya Singha Choudhury  
Mr. Anusha Nagarajan  
Ms. Perna Priyadarshini

Counsel for the Respondent(s): Mr. Parag Tripathi, Sr. Adv.  
Mr. Buddy A. Ranganadhan with  
Mr. Arijit Maitra and  
Ms. Richa Bharadwaja for R-1,  
Mr. J.J.Bhatt, Sr. Adv. with  
Mr. Anjali Chandurkar and  
Mr. Hasan Murtaza for R-2.

**IA No.190 of 2013**  
**IN**  
**Appeal No.125 of 2013**

**In the Matter of:**

- 1. Indian Hotel & Restaurant Association  
B-2, Wadala Shriram Industrial Estate,  
Ground Floor, G.D. Ambedkar Marg,  
Wadala, Mumbai-400031.**
- 2. Hotel and Restaurant Association  
Western India  
Candy House, 1<sup>st</sup> Floor,  
Mandlik Road  
Colaba, Mumbai-400 001.**

**...Applicant(s)/Petitioner**

**Versus**

- 1. Maharashtra State Electricity Regulatory Commission  
World Trade Centre No.1, 13<sup>th</sup> Floor,  
Cuffe Parade, Colaba, Mumbai-400 005.**
- 2. Reliance Infrastructure Ltd.,  
Reliance Energy Centre  
Santa Cruz(East), Mumbai-400 055.**
- 3. Tata Power Company Ltd., (Distribution)  
Bombay House  
24, Homi Mody Street,  
Mumbai-400 001.**
- 4. Government of Maharashtra  
Through Principal Secretary(Energy)  
Prakashgad(MSEB)Building  
Plot No.G-9, Bandra(E)  
Mumbai-400 051.**

5. **Government of Maharashtra  
Through Principal Secretary(Finance)  
Mantralaya, Madam Cama Road,  
Nariman Point,  
Mumbai-400032.**
  
6. **Government of Maharashtra  
Through Principal Secretary(Planning)  
Mantralaya, Madam Cama Road,  
Nariman Point,  
Mumbai-400032.**
  
7. **Brihanmumbai Electric Supply and Transport  
Undertaking(BEST)  
BEST Bhavan  
BEST Marg, P.O. Box No.192  
Mumbai-400 001.**

**...Respondent(s)**

Counsel for the Applicant (s) : Ms. Shikha Ohri

Counsel for the Respondent(s): Mr. Parag Tripathi, Sr. Adv.  
Mr. Buddy A. Ranganadhan with  
Mr. Arijit Maitra and  
Ms. Richa Bharadwaja for R-1,  
Mr. J.J.Bhatt, Sr. Adv. with  
Mr. Anjali Chandurkar and  
Mr. Hasan Murtaza for R-2.  
Mr. Sitesh Mukherjee  
Mr. Sakya Singha Choudhury  
Mr. Anusha Nagarajan  
Ms. Purna Priyadarshini for R-3.

**IA No.189 of 2013**  
**IN**  
**Appeal No.126 of 2013**

**In the Matter of:**

1. **Bharti Airtel Limited**  
**Having Mumbai, Maharashtra and Goa Circle Office**  
**At Bharti Airtel Limited,**  
**Interface Building-7,**  
**7<sup>th</sup> Floor, Malad Link Road,**  
**Malad(West),**  
**Mumbai-400064.**  
Also the  
**Cable Landing Station**  
**At CTS-G/30/3, Mlan CHS Ltd Link-Road Extn,**  
**Vithalbhai Patel Road Santacruz West**  
**Opp Hindu Cemenry,**  
**Mumbai-400054.**

**...Applicant(s)/Petitioner**

**Versus**

1. **Maharashtra State Electricity Regulatory Commission**  
**World Trade Centre No.1, 13<sup>th</sup> Floor,**  
**Cuffe Parade, Colaba, Mumbai-400 005.**
2. **Reliance Infrastructure Ltd.,**  
**Reliance Energy Centre**  
**Santa Cruz(East), Mumbai-400 055.**

- 3. Government of Maharashtra  
Through Principal Secretary(Energy)  
Prakashgad(MSEB)Building  
Plot No.G-9, Bandra(E)  
Mumbai-400 051.**
- 4. Government of Maharashtra  
Through Principal Secretary(Finance)  
Mantralaya, Madam Cama Road,  
Nariman Point,  
Mumbai-400032.**
- 5. Government of Maharashtra  
Through Principal Secretary(Planning)  
Mantralaya, Madam Cama Road,  
Nariman Point,  
Mumbai-400032.**
- 6. Tata Power Company 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.**

**...Respondent(s)**

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

Counsel for the Respondent(s): Mr. Parag Tripathi, Sr. Adv.  
Mr. Buddy A. Ranganadhan with  
Mr. Arijit Maitra and  
Ms. Richa Bharadwaja for R-1,  
Mr. J.J.Bhatt, Sr. Adv. with  
Mr. Anjali Chandurkar and  
Mr. Hasan Murtaza for R-2.

**Appeal No.123 of 2013**

**In the Matter of:**

- 1. Shopping Centres Association of India,  
a company incorporated under the Companies Act,  
Having its registered office at S-21, Okhla Industrial  
Estate, Phase-2, New Delhi-110020**

**...Applicant(s)/Petitioner**

**Versus**

- 1. Maharashtra State Electricity Regulatory Commission  
World Trade Centre No.1, 13<sup>th</sup> Floor,  
Cuffe Parade, Colaba, Mumbai-400 005.**
- 2. Reliance Infrastructure Ltd(R-Infra),  
A company registered under the Indian Companies  
Act,1913, having its registered office at H Block, 1<sup>st</sup>  
Floor, Dhirubhai Ambani Knowledge City,  
Navi Mumbai-400 710.**
- 3. Tata Power Company Ltd.,  
Bombay House  
24, Homi Mody Street,  
Mumbai-400 001.**

**...Respondent(s)**

Counsel for the Applicant (s) : Mr. M.G. Ramachandran  
Mr. Shikhil Suri

Counsel for the Respondent(s): Mr. Parag Tripathi, Sr. Adv.  
Mr. Buddy A. Ranganadhan with  
Mr. Arijit Maitra and  
Ms. Richa Bharadwaja for R-1,  
Mr. J.J.Bhatt, Sr. Adv. with  
Mr. Anjali Chandurkar and  
Mr. Hasan Murtaza for R-2.

### **Appeal No.124 of 2013**

#### **In the Matter of:**

- 1. Retailers Association of India,  
a company incorporated under the Companies Act,  
having its registered office at 111/112, Ascot Centre  
Sahar Road, Andheri(East), Mumbai-400 051**

**...Applicant(s)/Petitioner**

**Versus**

- 1. Maharashtra State Electricity Regulatory Commission  
World Trade Centre No.1, 13<sup>th</sup> Floor,  
Cuffe Parade, Colaba, Mumbai-400 005.**
- 2. Reliance Infrastructure Ltd(R-Infra),  
A company registered under the Indian Companies  
Act,1913, having its registered office at H Block, 1<sup>st</sup>  
Floor, Dhirubhai Ambani Knowledge City,  
Navi Mumbai-400 710.**



**3. Tata Power Company Ltd.,  
Bombay House  
24, Homi Mody Street,  
Mumbai-400 001.**

**...Respondent(s)**

Counsel for the Applicant (s) : Mr. M.G. Ramachandran  
Mr. Shikhil Suri

Counsel for the Respondent(s): Mr. Parag Tripathi, Sr. Adv.  
Mr. Buddy A. Ranganadhan with  
Mr. Arijit Maitra and  
Ms. Richa Bharadwaja for R-1,  
Mr. J.J.Bhatt, Sr. Adv. with  
Mr. Anjali Chandurkar and  
Mr. Hasan Murtaza for R-2.

## **ORDER**

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,**  
**CHAIRPERSON**

These Appeals have been filed by Tata Power Company Limited and other change-over consumers as against the impugned order dated 10.5.2013 passed by Maharashtra State Commission directing large and unprecedented increase in levels of Cross Subsidy Surcharge applicable to various categories of consumers who have changed over to the Appellant (Tata Power) for the supply of electricity from the Appellant on the distribution network of the Reliance Infrastructure Limited(R-Infra), the

Respondent. During the pendency of these Appeals, the Appellants/Applicants filed different IAs in each of the Appeals seeking for stay of the operation of the impugned order dated 10.5.2013.

2. The learned Sr.Counsel for the Tata Power Company Limited(Tata Power) as well as the learned Counsel for other Appellants' consumers made the elaborate arguments in these Interim Applications seeking for the interim order of stay of the operation of the impugned order pending disposal of these Appeals before this Tribunal.

3. The short facts are as follows:-

- i) The Appellant, Tata Power Company Limited(Tata Power) and the Reliance Infrastructure Limited(R-Infra) the 2<sup>nd</sup> Respondent are parallel distribution licensees in South Mumbai with parts of licensees' supply area being common.
- ii) R-Infra filed a petition being the Case No.72 of 2010 for truing up for the year 2008-09, Annual Revenue Requirement and tariff determination for 2010-2011. In the said petition, R-Infra sought Cross Subsidy Surcharge to be imposed on the change-over consumers who had migrated from R-Infra to Tata Power, the Appellant for availing supply of power. In this petition, the State Commission passed an order on 29.7.2011 granting in-principle approval to imposition of Cross Subsidy Surcharge on the changeover consumers receiving the supply from the Tata Power through the R-Infra's network. However, the State Commission did not determine the Cross Subsidy Surcharge at that stage.

- iii) This order dated 29.7.2011 was challenged by Tata Power as well as other consumers before this Tribunal in Appeal Nos.132 of 2011 batch, challenging the imposition of Cross Subsidy Surcharge.
- iv) On 9.9.2011, in case of No.43 of 2010, the State Commission passed an order computing the Cross Subsidy Surcharge for all the Distribution Licensees in the State of Maharashtra.
- v) The aforesaid order dated 9.9.2011 was challenged by the R-Infra before this Tribunal in Appeal No.178 of 2011 assailing the quantum of the Cross Subsidy Surcharge. The said Appeal is pending before this Tribunal and the judgment has been reserved after hearing the parties.
- vi) The R-Infra, in the meantime, filed a petition before the State Commission for approval of Annual Performance Review(ARR) and tariff for the financial year 2011-12 in case No.180 of 2011. In the said petition R-Infra sought revision of Cross Subsidy Surcharge. This petition was disposed of by the State Commission on 15.6.2012 whereby it declined to determine Cross Subsidy Surcharge for R-Infra in view of the pendency of the Appeal in Appeal No.178 of 2011 before this Tribunal where one of the issues pertained to computation of Cross Subsidy Surcharge. Against this order, R-Infra filed an Appeal in Appeal No.160 of 2012 challenging non-revision of Cross Subsidy Surcharge and same is also pending before this Tribunal.
- vii) In the meantime, the Appeal Nos.132 of 2011 batch wherein the validity of the order of imposition of Cross Subsidy

Surcharge on changeover consumers was questioned by Tata Power was heard and disposed of by this Tribunal upholding the validity of the said order by the judgment dated 21.12.2012.

- viii) Thereupon, on 07.1.2013, R-Infra filed a petition in Case No.3 of 2013 before the State Commission seeking fresh determination of Cross Subsidy Surcharge based on the values approved by the order dated 15.6.2012 in Case No.180 of 2011. In that Application, the State Commission directed the R-Infra for impleadment of the Tata Power, BEST, Government of Maharashtra etc.
- ix) When the said Application in Case No.3 of 2013 was pending, R-Infra filed another petition in Case No.9 of 2013 being MYT petition on 25.1.2013 for the control period from Financial Year 2012-2013 to Financial Year 2015-16.
- x) In this Application, R-Infra sought for the increase in the Cross Subsidy Surcharge as well.
- xi) While the MYT proceedings in Case No.9 of 2013 were pending, the Government of Maharashtra sent a letter to the State Commission on 07.02.2013 in the proceedings in Case No.3 of 2013 conveying its views stating that the Cross Subsidy Surcharge may be de-linked from the road map to reduce Cross Subsidy Surcharge in Maharashtra and that the road map could be decided after due consultation in a period of 3 months.
- xii) This petition in Case No.3 of 2013 filed by the R-Infra seeking for the revision of Cross Subsidy Surcharge was opposed by

the Tata Power pointing out that the State Commission should not revise the Cross Subsidy Surcharge especially when the same issue is pending in Appeal No.178 of 2011 before this Tribunal.

- xiii) At that stage, i.e. on 19.2.2013 the State Commission, took up the MYT petition and issued public notice with reference to various issues including the issue of increase in the Cross Subsidy Surcharge inviting suggestions and objections.
- xiv) At that stage, the State Commission passed an order on 4.4.2013 in the true-up petition for the year 2011-12 observing that the issues of Cross Subsidy and Cross Subsidy Surcharge would be decided in the MYT proceedings which were pending then .
- xv) The public hearing in the MYT proceedings was held on 6.4.2013 before the State Commission. In this public hearing, Tata Power as well as a number of changeover consumers participated and made their objections and suggestions with reference to various issues including the issue of increase in the Cross Subsidy Surcharge. The public hearing was concluded on 06.4.2013. The State Commission, on the very same date, reserved order in the MYT proceedings in Case No.9 of 2013.
- xvi) At that stage, i.e. even before the orders were pronounced in the MYT proceeding, the State Commission on 10.5.2013 passed the impugned order in Case No.3 of 2013 whereby it had determined Cross Subsidy Surcharge on the basis of the

tariff applicable for the year 2011-12 considering the values approved in respect of power purchase cost in order dated 15.6.2012 in case No.180 of 2011.

- xvii) In this impugned order, the State Commission increased Cross Subsidy Surcharge payable by the HT-II commercial consumers from Paise 26 per unit to Rs.2.82 and LT-II commercial category consumers upto 50 kW from Paise 84 to Rs.4.09 per unit and payable by LT-II commercial category consumers above 50 kW from Rs.1.90 to Rs.4.63 per unit. Terming this increase as astronomical, the Appellants namely Tata Power and changeover consumers have filed all these Appeals challenging the impugned order.
- xviii) During the pendency of these Appeals they have filed the interim Applications seeking for the stay of the operation of the impugned order so that the status-quo which was prevalent prior to the issuance of the impugned order could be maintained.
- xix) In view of the nature of the urgency which has arisen due to the alleged enormous increase in Cross Subsidy Surcharge in the impugned order, we have taken up all the Interim Applications filed in these Appeals to hear and decide as to whether the grant of stay of the impugned order is desirable or not in view of the facts and circumstances of the case. Accordingly, we have heard the learned Senior Counsel and learned Counsel for the Applicants as well as the learned Senior Counsel for R-Infra as

well as the learned Counsel for State Commission, the Respondents.

- xx) Both the parties have made their elaborate submissions in support of their respective pleas at length. According to the Appellants/Applicants, there is a prima-facie case in these Appeals and the balance of convenience also is in favour of the Appellants and as such they are entitled for stay. On the other hand, the Respondents vehemently opposed these Applications contending that the Applicants have not made out any prima-facie case and the balance of convenience is only in favour of the Respondents and not in favour of the Appellants/Applicants and that therefore stay may not be granted.

4. Let us now refer to various contentions, which are vehemently urged by the Appellants in respect of their prayer for grant of stay.

i) By the impugned order, there has been a manifold increase in the Cross Subsidy Surcharge causing tariff shock to the Appellants. This is in violation of Section 61(g), National Electricity Policy and the Tariff Policy. This provision cast an obligation upon the State Commission to progressively reduce the Cross Subsidy and to notify road map for such a reduction. But in the impugned order, the State Commission has not followed this mandatory provision.

ii) There has been a gross violation of the principles of natural justice. The Appellants/Applicants who were most affected consumers in Mumbai City have not been given any notice in

the present proceedings in case No.3 of 2013. Admittedly, no public notice had been issued and as such, the changeover consumers were not given opportunity to make their objections with reference to the determination of Cross Subsidy Surcharge. This is in violation of Section 64 and 86(3) of the Electricity Act.

iii) The State Commission in its earlier order dated 15.6.2012 had specifically stated that the Cross Subsidy Surcharge could be determined only corresponding to the Tariff and the Annual Revenue Requirement and thereby ordered the existing tariff to be continued. It further observed that the said issue can not be taken up in the said proceedings at that stage as the issue pertained to the computation of the Cross Subsidy Surcharge was the subject matter of the pending Appeals in Appeal Nos.132 of 2011 batch and the Appeal No.178 of 2011 before this Tribunal. Though the Appeal No.132 of 2011 batch has been disposed of by this Tribunal, the Appeal No.178 of 2011 has not been disposed of and it is still pending. When that being the case, there is no reason as to why Cross Subsidy Surcharge has to be hurriedly determined in Case No.3 of 2013.

iv) The issue with regard to Cross Subsidy Surcharge was seized by the State Commission in the MYT proceedings in Case No.9 of 2013 for determination of tariff. The Appellant, Tata Power and the changeover consumers have filed detailed



objections on the proposed increase in Cross Subsidy Surcharge in the said proceedings in case No.9 of 2013. The public hearing was held in the MYT proceedings on 06.4.2013. In this hearing, the issue of increase in Cross Subsidy was raised. Without deciding the said issue on the basis of objections raised by the Appellant in the said MYT proceedings namely Case No.9 of 2013 which was reserved for orders, the State Commission hurriedly passed the impugned order in Case No.3 of 2013 increasing the Cross Subsidy Surcharge, which is astronomical that too without hearing the consumers.

v) In fact, the State Commission observed in the True up order dated 4.4.2013 that it would decide about Cross Subsidy Surcharge in the MYT proceedings. When the MYT proceedings are still pending, as the orders are not yet pronounced, the State Commission passed the impugned order in haste, contrary to the order dated 4.4.2013 by increasing Cross Subsidy Surcharge exponentially causing tariff shock to the consumers. It was not possible to de-link the exercise for the approval of Annual Revenue Requirement and determination of tariff. The Cross Subsidy Surcharge is the difference between the tariff applicable and the cost of supply. Unless the tariff and the cost of supply are determined, the applicable Cross Subsidy Surcharge can not be determined. The current level of Cross Subsidy will require the cost of supply presently determined and the tariff corresponding to the cost of supply determined. In the present case, both are part of

the MYT exercise in the said proceedings in case No.9 of 2013, in which orders are already reserved.

vi) The State Commission has merely acted on the basis of the views expressed by the Government of Maharashtra in its letter dated 7.2.2013. In fact, there was no occasion for the State Commission to implead the Government of Maharashtra in the said proceedings and ask for their views. On the basis of the letter sent by the Government of Maharashtra dated 7.2.2013 asking the State Commission to de-link the trajectory for reduction of Cross Subsidy Surcharge, the State Commission simply accepted its view without hearing the consumers at large. The Government has no role either for reduction of Cross Subsidy Surcharge or for the determination of Cross Subsidy Surcharge. The impugned order acting upon the views of the Government, does not reflect an independent view to be taken by the State Commission. This is against the law laid down.

vii) The balance of convenience is in favour of the Appellant as there is an astronomical increase in the level of the Cross Subsidy Surcharge. The quantum of increase in Cross Subsidy Surcharge is so substantial causing tariff shock. If the impugned order is not stayed, the Appellants, being the changeover consumers, will be forced to pay huge amount of Cross Subsidy Surcharge to R-Infra to meet the business loss and the revenue gap of the R-Infra. If the increase of the Cross

Subsidy Surcharge has been allowed to be collected from the consumers during the pendency of the Appeal, it will not be practically possible to identify those consumers to refund in the event of Appellants succeed in the Appeals and on the other hand if it is held that the amount is found payable to the R-Infra, the same can be recovered subsequently from the consumers.

5. The learned Senior Counsel for the R-Infra as well as the learned Senior Counsel for the State Commission with equal vehemence replied to each of the grounds by mainly contending that the Appellants have neither made out any prima-facie case nor balance of convenience for grant of stay as these grounds have to be considered only at the time final hearing and not at this stage.
6. We have carefully considered the submissions made by both the parties. As correctly pointed out by the Respondents in their forceful arguments, most of the grounds urged by the Appellants, would relate to the merits of the case, which could be decided only at the time of final disposal of these Appeals. Therefore, we do not want to go into the merits of the matter at this stage as we are concerned only with the question as to whether there is any prima-facie case made out for grant of stay by taking into consideration the balance of convenience of the parties.
7. In this context, we may refer to a few factual aspects, which would be relevant to decide the issue of grant of stay.

**i) The State Commission while passing the order on 15.6.2012 refused to fix Cross Subsidy Surcharge acknowledged the fact that Cross Subsidy Surcharge could be determined only as a part of Annual Revenue Requirement and tariff approval. In the said order, it was specifically observed by the State Commission that no view can be taken with reference to the Cross Subsidy Surcharge especially when the issue pertaining to the computation of Cross Subsidy Surcharge was pending before this Tribunal in Appeals namely Appeal No.132 of 2011 batch and Appeal No.178 of 2011. Though the Appeal No.132 of 2011 batch has been disposed of, the Appeal No.178 of 2011 as referred to in the order dated 15.6.2012 is still pending before this Tribunal.**

**ii) The R-Infra on 07.1.2013 filed a petition before the State Commission in case No.3 of 2013 i.e. the present proceedings, seeking for determination of Cross Subsidy Surcharge for Open Access consumers. In this petition, only the other distribution licensees and the Government of Maharashtra alone were impleaded as a party and only they were heard. In fact, on 7.2.2013 the Government of Maharashtra had sent a letter to the State Commission to de-link the trajectory for reduction in Cross Subsidy Surcharge from the determination of Cross Subsidy Surcharge. When the prayer was made by the R-Infra in Case No.3 of 2013 seeking for the determination of Cross**

**Subsidy Surcharge, the State Commission did not choose to issue notice to the consumers with reference to the said issue. On the other hand after hearing the distribution licensees and the Government, the State Commission has passed the impugned order dated 10.5.2013 revising the Cross Subsidy Surcharge applicable to changeover consumers by increasing the Cross Subsidy Surcharge to a great extent without hearing them.**

**iii) While the petition in case No.3 of 2013 i.e. the present proceedings filed by the R-Infra was pending, R-Infra had chosen to file another petition before the State Commission being case No.9 of 2013 in the matter of Multi Year Tariff(MYT) petition for the control period from 2012-13 to 2015-16. In this petition also, the R-Infra sought for the increase in Cross Subsidy Surcharge raising the same as one of the issues. In this matter, public notice was issued inviting suggestions and objections. The Appellants as well as other consumers participated in the public hearing which took place on 6<sup>th</sup> April, 2013. The Appellants, in fact, filed their specific objections to the petition as against the proposal for increase in the Cross Subsidy Surcharge in writing on 29.3.2012 itself. After hearing the parties on 06.4.2013, the State Commission reserved orders. Admittedly, the orders in the MYT proceedings involving several issues including the increase in the Cross Subsidy are yet to be pronounced.**

**iv) In the meantime, the State Commission conducted final true-up for the R-Infra for the year 2010-11 and 2011-12. In the true-up proceedings when the issue of determination of Cross Subsidy Surcharge was raised, the State Commission passed an order in the said proceedings on 4.4.2013 observing that the issue of determination of Cross Subsidy Surcharge would be considered and decided in the MYT proceedings. As mentioned earlier, on 06.4.2013, the State Commission heard the public, Tata Power and changeover consumers on this issue also i.e. increase in Cross Subsidy and reserved orders. Admittedly, the orders in the MYT proceedings involving the Cross Subsidy issue are yet to be pronounced. At this juncture, the impugned order dated 10.5.2013 increasing the Cross Subsidy *Surcharge* has been passed.**

8. The above aspects would indicate that even though the issue relating to determination of Cross Subsidy Surcharge is pending before this Tribunal in Appeal No.178 of 2011 and pending before the State Commission in Case No.9 of 2013 i.e. MYT proceedings in which the Appellants and consumers were heard with reference to the said issue after entertaining their objections and suggestions in which order is reserved, the State Commission has, at this stage, passed the impugned order dated 10.5.2013 in Case No.3 of 2013 revising the Cross Subsidy Surcharge fixed earlier on 9.9.2011 by increasing the Cross Subsidy Surcharge to a great extent payable by the Appellant's changeover consumers.

9. We are unable to understand as to why the State Commission had hurriedly passed the impugned order with reference to this issue which is admittedly pending before the State Commission in MYT proceedings as well as in Appeal No.178 of 2011 before this Tribunal. No reasons have been given in the impugned order with regard to the urgency.
10. Of course, jurisdiction of the State Commission to fix the Cross Subsidy Surcharge through the impugned order dated 10.5.2013, revising Cross Subsidy Surcharge fixed on 15.6.2012 cannot be questioned and decided at this stage. But, there are no circumstances shown in the impugned order, as to why the State Commission was constrained to decide the same issue in question hurriedly, when the same is pending both before the State Commission as well as before this Tribunal.
11. It is also noticed that the State Commission has decided to determine Cross Subsidy in the present proceedings after getting the view of the Government of Maharashtra without hearing the parties who are likely to be affected due to the high increase in the Cross Subsidy Surcharge.
12. Admittedly, the increase in the Cross Subsidy Surcharge by the impugned order dated 10.5.2013 is from Paise 26 per unit to Rs.2.82 per unit for HT-II consumers and from Paise 84 to Rs.4.09 per unit for LT-II(b) i.e. ten times or 1000% and 400% respectively. According to the Appellants, the worst tariff shock has been caused due to the sudden increase which is quite astronomical that too without hearing them.

13. We find that there is prima-facie merit in this contention. That apart, the balance of convenience also in our view lies in favour of the Appellants. If the impugned order, with reference to the increase in Cross Subsidy Surcharge is not stayed pending adjudication of the present Appeals, the Appellants will have to pay Surcharge which is increased to 1000% and 400% respectively and this would cause grave prejudice to the consumers once such increase of Cross Subsidy Surcharge has been collected from the changeover consumers. On the other hand, if the Appellants do not succeed, the amount can be recovered by R-Infra, subsequently from the consumers.
14. In view of the above circumstances, we deem it fit to grant the stay of the impugned order dated 10.5.2013 so that the status-quo which was prevalent prior to the impugned order will be maintained till the disposal of these Appeals. Accordingly, ordered.
15. At this juncture, we must make it clear that this interim order of stay is only confined to limited issue for granting stay of the operation of impugned order alone pending the Appeals to avoid the hardship likely to be suffered by the consumers. It should not be taken to mean that we have decided this issue finally. It is open to both the parties to argue all the issues raised in these Appeals before this Tribunal while these Appeals are taken up before this Tribunal for final disposal.
16. In view of the strong objection raised by Respondents for grant of stay, we think it appropriate to fix an early date for final disposal of



the Appeals. Accordingly, we post the main Appeals for hearing in the 1<sup>st</sup> week of August,2013 for final disposal.

17. In the meantime, the Respondents are directed file the reply/counter in the main Appeals as soon as possible preferably on or before 29<sup>th</sup> July,2013 after serving the copies on the other side. The Appellants are also directed to file rejoinder, if any, thereafter. Thus, all the Interim Applications seeking for stay are allowed pending disposal of these Appeals.

19. Post the main Appeals for final hearing on **5<sup>th</sup> August,2013**.

**(Rakesh Nath)**  
**Technical Member**

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

Dated:21<sup>st</sup> June, 2013

✓ ~~REPORTABLE/NON-REPORTABLE~~