



**केन्द्रीय विद्युत विनियामक आयोग**  
**CENTRAL ELECTRICITY REGULATORY COMMISSION**



*Sanoj Kumar Jha, IAS*  
Secretary

**File No : RA-10/6/2020-Statutory advice - CERC**

**Dated : 15<sup>th</sup> October 2020**

**Subject : Advisory under Section 79(2) of the Electricity Act, 2003 on the Draft Rules proposed by the Ministry of Power, Government of India**

*Dear Sir,*

Ministry of Power, Government of India has circulated the following draft Rules eliciting comments thereon:

- (a) Electricity (change in Law, Must Run status, and other Matters) Rules, 2020.
- (b) Transmission System Planning, Development, and Recovery of inter-State Transmission Charges Rules, 2020.
- (c) Electricity (Late Payment Surcharge) Rules, 2020.

2. While the draft Rules at paragraph 1(a) and (c) have been put on the website of the Ministry of Power, the draft Rule at paragraph 1(b) has not been put on the website. It is requested that for greater transparency and probity, draft Rules may not only be put on the website for wide publicity and soliciting responses of wider stakeholders, but the responses received may also be disclosed on the website for stakeholders at large to appreciate the impact of such Rules.

3. While the draft Rules at paragraph 1(a) and (c) are purported to be made in exercise of powers of the Central Government under Section 176 of the Electricity Act, 2003 (EA2003), draft Rules at paragraph 1(b) are purported to be made in exercise of powers of Central Government under Section 176(2)(z) of the EA2003. The relevant provisions of Section 176 of EA2003 are extracted as under:

“176. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

- (a) to (y).....
- (z) any other matter which is required to be, or may be, prescribed.”

4. Hon'ble Supreme Court in *Hukamchand Vs Union of India* [(1972) 2 SCC 601] has held that the initial difference between subordinate legislation and the statute laws lies in the fact that a subordinate law-making body is bound by the terms of its delegated or derived authority and court of law, as a general rule, will not give effect to the rules, thus made, unless satisfied that all conditions precedent to the validity of the rules have been fulfilled.

5. A normal feature of enabling Acts is first to grant the power to make rules etc. in general terms, e.g., "to carry out the purposes of this Act" and then to say that "in particular and without prejudice to the generality of the foregoing provisions", such rules etc. may provide for a number of enumerated matters. If power is conferred to make subordinate legislation in general terms, the particularisation of topics is construed as merely illustrative and does not limit the scope of general power [Justice G.P.Singh in his book "Principles of Statutory Interpretation"]. Therefore, the primary source of rule making power of Central Government is Section 176(1) of the EA2003 and Section 176(2) is merely illustrative in nature.

6. The primary source of rule-making power must be related to the purpose of enabling legislation. Hon'ble Supreme Court in *Shri Sitaram Sugar Co. Ltd. Vs UOI* [(1990) 3 SCC 223] has observed as under:

"47. Power delegated by statute is limited by its terms and subordinate to its objects. The delegate must act in good faith, reasonably, intra vires of the power granted, and on relevant consideration of material facts..... They must be reasonably related to the purpose of the enabling legislation."

The power conferred on the Central Government under Section 176(1) and (2) of the EA2003 must be relatable to some substantive provisions of the EA2003 and the purpose of the legislation.

7. Section 176 of the EA2003 regarding the rule making power of the Central Government is *pari materia* with Section 178 of the EA2003 regarding regulation making power of the Central Commission. In *PTC India Ltd Vs CERC* [9201) 4 SCC 603], the Hon'ble Supreme Court examined the scope of Section 178(1) and (2) of the EA2003 and observed as under:

"65.....In our view, apart from Section 178(1) which deals with "generally", even under Section 178(2)(ze) CERC could enact a regulation on any topic which may not fall in the enumerated list provided such power falls within the scope of the 2003 Act. Trading is an activity recognised under the said 2003 Act."

Therefore, the principle laid down in *PTC* case as quoted above is that apart from the generality of power under Section 178(1), the Central Commission can enact regulation on any topic under Section 178(2)(ze) if such power falls within the scope of EA2003. Since the Central Commission has the power under Section 79(1)(j) of the EA2003 to fix trading margin, the Hon'ble Supreme Court upheld the power of the Central Commission to make regulation with regard to trading margin under Section 178(2)(ze) apart from Section 178(1) of the EA2003. In other words, the power to make regulations under Section 178(1) or (2)