

will have to be relatable to some substantive provisions in the EA2003 conferring power on the Central Commission to deal with the topic on which regulation is made.

8. The same principle is applicable in case of rule making power of the Central Government under Section 176 of the EA2003. Under Section 176(1) of the EA2003, the Central Government has been vested with the power to make rules for carrying out the provisions of the EA2003. The general principle in such cases is that the rule making power is to be exercised subject to the overall requirement that the rules made ought to have nexus with the underlying purposes of the EA2003. Further, the power of the Central Government to make rule under Section 176(2)(z) of the EA2003 "on any other matter which is required to be or may be prescribed" must fall within the scope of and be relatable to the purposes and objects of the EA2003. The question that arises is: what is the test of a rule satisfying the criteria of purposes and objects of a statute?

9. The Hon'ble Supreme Court in the case of *Minerva Talkies Bangalore Vs State of Kerala* [(1988) Supp SCC 176] has held that "the declared will of the legislature and the policy and purpose of the Act are discernible from the title, **preamble and express provisions of the Act**". Therefore, the **statement of Objects and Reasons** of EA2003 and the **substantive provisions** of the Act need to be considered for examining the basis of the rule making power of the Central Government under Section 176(1) of the EA2003 "to carry out the provisions of the Act" or under Section 178(2)(z) "on any other matter which is required to be or may be prescribed".

10. The Statement of Objects and Reasons of the EA2003 provides as under:

"3. With the policy of encouraging private sector participation in generation, transmission and distribution and the objective of distancing the regulatory responsibilities from the Government to the Regulatory Commissions, the need for harmonising and rationalising the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and Electricity Regulatory Commission Act, 1998 in a new self-contained comprehensive legislation arose. Accordingly, it became necessary to enact a new legislation for regulating the electricity supply industry in the country which would replace the existing laws, preserve its core feature other than those relating to the mandatory existence of the State Electricity Board and the responsibilities of the State Government and State Electricity Board with respect to regulating licensees. There is also need to provide for newer concepts like power trading and open access....."

11. Hon'ble Supreme Court in *Sesa Sterlite Limited Vs OERC* [(2014) 8SCC 444] has underscored the object of the EA2003 in the following terms:

"22.The main failure on the part of the Electricity Boards was to take decision on tariffs in independent manner and cross-subsidies had reached untenable levels. To address this issue and also to distance governance from determination of tariffs, the Electricity Regulatory Commission Act was enacted in the year 1998. This Act created the regulatory mechanism. Within few years, it was felt that the three Acts of 1910, 1948 and 1998 which were operating in the fields needed to be brought in a new

self-contained comprehensive legislation with the policy of encouraging private sector participation in generation, transmission and distribution and also the objectives of distancing the regulatory responsibilities from the Government and giving it to the Regulatory Commissions. With these objectives in mind the Electricity Act, 2003 has been enacted.....”

12. Therefore, one of the avowed objectives of the EA2003 was distancing the regulatory responsibilities from the Government and vesting it in the Regulatory Commissions. In order to achieve the said objectives, the powers and functions of the Central/State Governments and Regulatory Commissions have been separately and distinctly specified in the EA2003.

13. Perusal of the provisions of the EA2003 reveals that it clearly demarcates the powers and functions of the Central Government, State Governments, Central Commission, State Commissions and Central Electricity Authority and Appellate Tribunal for Electricity. Some of the provisions are discussed as under:

(a) Section 2(5) of the EA2003 defines Appropriate Government to mean Central Government and State Governments. Central Government is appropriate Government in respect of generating companies wholly or partly owned by it, in relation to any inter-State generation, transmission, trading or supply of electricity and in respect of mines, oil-fields, railways, national highways, airports, telegraphs, broadcasting stations, and any work of defence, dockyard, nuclear power installations, in respect of NLDC or RLDC and any work or electric installation belonging to it or under its control. State Government is the appropriate Government in any other case where it is having jurisdiction under the EA2003.

(b) Central Government has been vested with the responsibilities to prepare National Electricity Policy and Tariff Policy (Section 3), national policy on standalone system including renewable and non-conventional sources of energy (section 4), national policy on rural electrification (Section 5), joint endeavour with State Government to provide access to electricity to all areas (Section 6), to issue direction to a generating company to operate and maintain and operate its generating station in extraordinary circumstances [Section 11(1)], prescribing capital adequacy, credit worthiness or code of conduct for two or more persons seeking to distribute electricity in the same area (6th Proviso to Section 14), fees for seeking licence [Section 15(1)] to make region-wise demarcation of the country for efficient, economical and integrated transmission and supply of electricity (Section 25), establishment of NLDC (Section 26), establishment of RLDCs (Section 27), directions to RLDCs to take measures for maintaining smooth and stable transmission of electricity (Section 37), Notification of Central Transmission Utility (Section 38), issue guidelines for competitive bidding (Section 63), make rules for works of licensees (Section 67(2), approval for laying overhead lines (Section 68), appointment of Members and Chairpersons of CEA (Section 70), prescribing the functions and duties of CEA (Section 73), directions in policy matters to CEA (Section 75), constitution of Selection Committee for selection and appointment of Chairperson and Members of Central Commission (Section 78), referring any matter to Central Commission for advice [(Section 79(2)], constitution of Joint Commission (Section 83), Removal of Members (Section 90), approval of the posts and categories of officers and employees of Central Commission (Section 91), grant to Central Commission (Section 98),

constitution of CERC Fund (Section 99), directions to Central Commission in the matter of policy involving public interest (Section 107), directions on policy to Joint Commission for Union Territories [Section 109(b)], establishment of Appellate Tribunal (Section 110), terms and conditions of the Chairperson and Members of Appellate Tribunal (Section 115), providing officers and other employees to Appellate Tribunal (Section 119), appointment of Chief Electoral Officer (Section 162), issue of authorisation to officer, licensee or other person to exercise powers of Telegraph Authority (Section 164), direction for acquisition of land by a person other than a company (Section 165), constitution of coordinated forums (Section 166), prescribing rules for service of notices, orders or documents (Section 171), Power to make rules (Section 176), power to remove difficulties (Section 183), Power to amend the Schedule containing State specific laws [Section 185(4)].

(c) The Central Commission has been vested with the responsibility to specify regulation on open access to ISTS [Section 2(47)], offsetting the adverse impact of directions issued by Central Government under Section 11(1) of the EA2003 on a generating company [Section 11(2)], terms and conditions, grant, amendment and revocation of licence for inter-State Transmission and trading of electricity, (Sections 12 to 22), directions to licensees for efficient supply and to promote competition (Section 23), wheeling and optimum scheduling of electricity and real time operation to be carried out by RLDCs as per Grid Code (Section 28), adjudication of disputes with regard to directions issued by RLDC [Section 29(5)], facilitate use of intervening transmission and specify the rates, charges and terms and conditions for use of intervening transmission facility (Section 35), transmission charges and surcharge for use of ISTS [Section 38(2)(d) and provisos there under], other business of transmission licensees (Section 41), specify the technical requirement, capital adequacy, credit worthiness and duties of inter-State trading licensee (Section 52), Specifying standard of performance of licensees (Sections 57 and 58) directions to prevent market domination by a licensee or generating company (Section 60), Specifying Terms and Conditions of Tariff (Section 61), determination of tariff (Sections 62 and 64), adoption of tariff discovered through competitive bidding (Section 63), development of market (Section 66), disputes with regard to works of licensees (section 67), functions of the Central Commission (Section 79), Centra Advisory Committee (Section 80), terms of office and conditions of service of members of CERC (Section 89), to specify the Staff Service Regulations with the approval of Central Government and appointment of consultants (Section 91), Specifying Conduct of Business Regulations and regulating proceedings before Commission (Section 92), Powers of the Commission with regard to enquiry or proceedings (Section 94), power of entry or seizure (Section 96), delegation of power (Section 97), CERC Funds, Grants and Loans, accounts and audits, Annual Reports (Sections 98 to 101), directions by Central Government (Section 107), directions by Appellate Tribunal to Central Commission (Section 121), representation before Appellate Tribunal (Section 124), investigation of generating company or licensee (Sections 127 to 130), penalty for non-compliance (Section 142), adjudication of disputes referred under Section 29 (Sections 143 & 144), dispute resolution through arbitration (Section 158), Coordination Forum (Section 166), Power to make regulations to carry out the provisions of the EA2003 (Section 178).

(d) Similarly, various provisions of the EA2003 demarcate the legislative and administrative powers of the State Governments, State Commissions and Central Electricity authority.