

# **Electricity Act, 2003**

## **Regulatory Process & Dispute Resolution**

# Powers of Appropriate Commission

## **PTC v. CERC , 2010 (4) SCC 603:**

CERC assigned with decision making & regulation making functions

Law comes into existence not only through legislation but also through regulation and litigation

According to Prof Wade “between legislative and administrative function we have regulatory function”

An order imposing regulatory fees can be passed even in the absence of regulation

**Regulate through Regulations**

# Law through regulations and orders/directions

Appropriate Commission has the power to make regulations under Section 178 & 181.

There has to be compliance with Electricity (Procedure for Previous Publication) Rules 2005,

Law also emanates from dispute resolution process

Appropriate Commission also issues directions & orders as part of its administrative powers

# The extent of delegated legislation

Supreme Court (SC) in Cellular Operators Association of India & Ors. v. UoI, (2003) 3 SCC 186, has held regulatory bodies exercise wide jurisdiction; they lay down law; they may prosecute, punish and act like an internal audit, fix price, area of operation, interfere with rights of licensee;

In Global Energy Ltd. & Anr. V. CERC, (2009) 15 SCC 570, the SC while dealing with a challenge to CERC's trading license regulation held that delegates have to conform to openness, transparency, responsiveness and accountability;

In Cellular Operators Association v. TRAI, (2016) 7 SCC 703, the SC has laid down that subordinate legislation should be issued after due consideration of stakeholder comments together with an explanatory memorandum which deals with such comments and reasons for agreeing/disagreeing with the same;

# Regulating through orders

The SC in PTC v. CERC (2010) 4 SCC 603 has held that it is not necessary for existence of regulation to 'regulate'; Regulations can happen through orders which are binding on stakeholders;

From the very beginning Appropriate Commissions have been regulating the sector by issuing orders. As an example ABT order of CERC dated 4.1.2000. Levy of UI charges was initially introduced through the ABT order. In a challenge by one AP Discom, the Supreme Court in CDDCL v. CERC, (2007) 8 SCC 197 upheld the power to regulate and discipline under Section 79 – held, power to regulate includes power to enforce.

Recently CERC introduced 'market coupling' in a suo moto order dated 23.07.2025 to implement market coupling across power exchanges in the day-ahead market. The order has been challenged by IEX before the APTEL in Appeal No. 298/2025 and is pending adjudication.

# DISPUTE RESOLUTION

The SC in *GUVNL v. Essar Power Ltd.* (2008) 4 SCC 755 dealt with powers of State Commission to adjudicate disputes and refer to arbitration under Section 86(1)(f) of the Electricity Act, 2003;

In *MPPMCL v. DVC*, Appeal No. 309/2019, the APTEL has held that under Section 79, CERC must refer all “non-tariff” disputes to arbitration. This has been upheld by the SC on 23.09.2024.

Recently, CERC by orders dated 19.11.2025 in Petition No. 107/MP/2023 & batch and 21.10.2025 in Petition No. 349/MP/204 referred non-tariff disputes to arbitration.

# Requirement of quorum

In State of Gujarat & Ors. v. Utility users' welfare association, (2018) 6 SCC 21, SC has held that it is mandatory that there should be a legal member in the Commission, more so when Commissions are exercising adjudicatory jurisdiction;

In Surya Alloy Industries v. WBERC & Ors, Appeal 267/2023, APTEL held that those who hear the matter must pass the order;

Is it necessary to have a legal member for tariff determination?

# Regulator & contracts

In *Apollo Tyres v. CP Sebastian*, (2009)14 SCC 360 (para 9) SC says that tribunals enjoy special powers under statutes, which are not available to a civil courts (eg. Industrial tribunal);

The SC in *Radharamanan v. Chandrashekhara Raja*, (2008) 6 SCC 750 ( at 761) deals with the power of company court/CLB under Companies Act, 1956 to set aside and modify contractual arrangements between a company and any person;

# Regulator & contracts

In PTC v. CERC, (2010) 4 SCC 603, SC holds that contracts have to be aligned with regulations;

In GUVNL v. Tarini, (2016) 8 743, the SC held that under Section 86(1)(b) the Court must lean in favour of flexibility and not read inviolability in terms of PPA insofar as the tariff stipulated therein as approved by the Commission is concerned.

Interpreting PTC v. CERC, on 13.04.2023, the SC in GUVNL v. Renew & Ors, Civil Appeal No. 3480 of 2020, held that unless a later regulatory amendment expressly overrides existing contracts, the terms of original contract bind the parties.

**Thank You**