SUPREME COURT OF INDIA **REPORTABLE**

Bench: Justices Pamidighantam Sri Narasimha and Aravind Kumar

Date of Decision: 8th February 2024

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4672 OF 2012

NARESH CHANDRA AGRAWAL …APPELLANT(S)

VERSUS

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA AND OTHERS …RESPONDENT(S)

Legislation:

Sections 21, 21A, 21B, and 29A of the Chartered Accountants Act

Rule 9 of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

Subject: Challenge to Rule 9(3)(b) of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 on the grounds of being ultra vires to the Chartered Accountants Act, especially Section 21 A(4) of the Act.

Headnotes:

Civil Appeal – Chartered Accountant's Professional Conduct – Appeal against High Court's decision upholding Rule 9(3)(b) of the Chartered Accountants' (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 – Challenged rule allows Board of Discipline

to disagree with Director (Discipline) and refer matter to Disciplinary Committee – Upheld as in line with the objectives of the Chartered Accountants Act, 1949. [Para 8, 37-38]

Auditing and Reporting – Failure to Report Suspicious Transactions – Appellant, a Chartered Accountant, did not report unusual transactions in an audit of Sahara India, Aliganj, Lucknow Branch – Complaint filed against the appellant for not fulfilling professional obligations. [Para 1-2]

Investigation Process – Role of Director (Discipline) and Board of Discipline – Director (Discipline) initially found appellant not guilty of misconduct – Board of Discipline disagreed and referred the case to the Disciplinary Committee – Validity of this process examined and upheld. [Para 4-7, 38]

Rule-making Authority – Scope and Application – Examination of Rule 9(3) of Rules, 2007 in the context of Section 29A of the Chartered Accountants Act, 1949 – Rule 9(3) extends beyond the explicit provision of Section 29A but is in line with the Act's purpose – Rule upheld as a valid exercise of the rule-making authority. [Para 20-38]

Legislative Delegation – “Generality vs Enumeration” Principle – Elucidation of principles for evaluating whether delegated legislation is ultra vires the parent statute – Application of these principles in upholding Rule 9(3). [Para 22-37]

Decision – Supreme Court dismisses the appeal, affirming the High Court's decision and the validity of Rule 9(3)(b) – No order as to costs. [Para 38]

Referred Cases:

- State of Tamil Nadu and Anr. v. P. Krishnamurthy and Ors. (2006) 4 SCC 517
- State of Jammu and Kashmir v Lakhwinder Kumar and Ors. (2013) 6 SCC 333
- Academy of Nutrition Improvement v. Union of India (2011) 8 SCC 274
- State of Kerala v. Shri M. Appukutty (1963) 14 STC 242

- PTC India Ltd. v. Central Electricity Regulatory Commission (2010) 4 SCC 603
- Hindustan Zinc Ltd. vs Andhra Pradesh State Electricity Board (1991) 3 SCC 299
- Shri Sitaram Sugar Co. Ltd. vs Union of India (1990) 3 SCC 223
- Afzal Ullah vs. The State of Uttar Pradesh 1963 SCC Online SC 76

J U D G E M E N T

Aravind Kumar, J.

1. The facts in brief are set out herein below:

The Bank of Rajasthan Limited, (hereinafter referred to as **'Complainant-bank'**) had engaged the services of M/s Ramesh C. Agrawal & Co. (hereinafter referred to interchangeably as **'the firm'/'service provider'**) for the purpose of conducting audit work. The audit work was to be carried out in respect of Sahara India, Aliganj, Lucknow Branch for a period of 3 years commencing from 01.01.2007. According to this arrangement, the service provider was required to submit monthly audit reports in respect of daily transactions/banking affairs of the concerned branch. This report had to be submitted within a particular time frame, i.e., by the 7th of the succeeding month. The service provider was also required to report any suspicious activity or foul play pertaining to the transactions under review, to the Chief Executive Officer of the Complainant bank. On 27.09.2009, a series of circuitous transactions (hereinafter referred to as '*subject transaction*') involving large sums of money are said to have taken place in certain accounts of the branch, which were neither regular nor normal in nature. However, in the audit report submitted to the Complainant bank, these transactions were not flagged.

2. According to the Complainant, the main purpose of engaging the firm for audit related work was to assist it in timely detection of irregularities/ lapses, besides observing as to whether the transactions were within the policy parameters as laid down by the Reserve Bank of India. In having failed to point out the suspicious transactions that took place on 27.09.2009, the Complainant alleges that the firm had utterly failed to discharge its professional obligation under the terms, as agreed.

3. It is in this background that the Complainant wrote to the firm, vide letter dated 05.03.2009 and called for its explanation. No satisfactory response was received. On 05.09.2009, yet another letter was issued to the firm, but no reply was received in that regard.

4. Accordingly, the Complainant proceeded to register its complaint against the audit firm before the Director (Discipline) on 21.12.2009. The Director (Discipline) forwarded a copy of the complaint to the firm and called upon it to disclose the name(s) of the member/person(s) who was/were responsible for conducting the audit and preparing the report pertaining to the subject transaction.

5. On 15.02.2010, there was a letter communication received by the Director (Discipline) from the audit firm, in which it was stated that the Appellant was given the responsibility for reviewing the subject transactions. The Appellant filed his written statement on 02.04.2010. The Complainant bank submitted its rejoinder on 02.06.2010. Certain additional documents were sought by the Director (Discipline) from the Complainant on 10.12.2010.

6. On consideration of the complaint, the written statement and the other matters on record, the Director (Discipline) arrived at a *prima facie* conclusion that the Appellant was not guilty of any professional or other misconduct within the meaning of clause (7), (8) and (9) of Part 1 of the Second Schedule of the Chartered Accountants' (Amendment) Act, 2006.

7. On such opinion of the Director being placed before the Board of Discipline, Respondent No.1 informed the Appellant that the Board of Discipline had disagreed with the *prima facie* opinion of the Director

(Discipline) and the Board had decided to refer the matter to the Disciplinary Committee for further action under Chapter V of the Chartered Accountants' (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 (for short 'Rules, 2007').

8. The action of the Board in disagreeing with the *prima facie* opinion of the Director (Discipline) and referring the matter for further action before the Disciplinary Committee was impugned before the High Court of Delhi in W.P.(C) No.6488 of 2011. The prayer in the said writ petition was to declare Rule 9(3)(b) of the Rules, 2007 as invalid on the ground that the said rule was *ultra vires* section 21 A (4) of the Act. The Ld. Division Bench having repelled the said challenge, the Appellants are now before us.

9. According to the Ld. Counsel for the Appellant, when the Director (Discipline) was of the *prima facie* opinion that the Appellant was not guilty of the alleged misconduct, the Board had two options available to it according to Section 21 A (4) of the Act. It could either close the matter at that very stage or direct the Director (Discipline) to further investigate and it could not have assumed the role of the Director and acted as the investigating agency by referring the matter to the Disciplinary Committee. It is submitted that there is no substantive basis in the parent Act for the action impugned in this appeal. The Ld. Counsel argued that the impugned Rule, being a delegated legislation, cannot provide for any action which is not contemplated under the parent Act.

10. Per contra, Ld. Counsel for the Respondent has sought to justify the correctness of the view taken in the impugned order. According to him, if the argument of the Appellant is accepted, the result would be that the Director (Discipline), who is merely a Secretary to the Board of Discipline, would have greater powers than the Board itself. This is because the Board would not be able to overrule the *prima facie* view taken by the Director (Discipline). The Board could, at best, direct the Director (Discipline) to conduct further investigation and nothing more. It is submitted that the legislature would not have intended such a consequence. There is nothing in the scheme of the Act to suggest that the Board cannot refer the matter to the Disciplinary Committee for further action.

11. Therefore, considering the arguments canvassed on behalf of both sides, the following question falls for our consideration:

"Whether Rule 9(3)(b) of the Rules, 2007 is inconsistent with and beyond the rule-making power of the Central Government?"

Relevant provisions in the Act and Rules:

12. It may be necessary to refer to certain provisions of the Act in order to better understand the scheme of the applicable law pertaining to investigation of complaints alleging misconduct. The relevant provisions are extracted hereinbelow:

"21. Disciplinary Directorate. -

(1) The Council shall, by notification, establish a Disciplinary Directorate headed by an officer of the Institute designated as Director (Discipline) and such other employees for making investigations in respect of any information or complaint received by it.

(2) On receipt of any information or complaint along with the prescribed fee, the Director (Discipline) shall arrive at a prima facie opinion on the occurrence of the alleged misconduct.

(3) Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule, he shall place the matter before the Board of Discipline and where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, he shall place the matter before the Disciplinary Committee.

(4) ***In order to make investigations under the provisions of this Act, the Disciplinary Directorate shall follow such procedure as may be specified.***

(5) Where a complainant withdraws the complaint, the Director (Discipline) shall place such withdrawal before the Board of Discipline or, as the case may be, the Disciplinary Committee, and the said Board or Committee may, if it is of the

view that the circumstances so warrant, permit the withdrawal at any stage.

21A. Board of Discipline. —

(1) The Council shall constitute a Board of Discipline consisting of--

(a) a person with experience in law and having knowledge of disciplinary matters and the profession, to be its presiding officer.

(b) two members one of whom shall be a member of the Council elected by the Council and the other member shall be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy.

(c) the Director (Discipline) shall function as the Secretary of the Board.

(2) The Board of Discipline shall follow summary disposal procedure in dealing with all cases before it.

(3) Where the Board of Discipline is of the opinion that a member is guilty of a professional or other misconduct mentioned in the First Schedule, it shall afford to the member a pportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely: -- (a) reprimand the member.

(b) remove the name of the member from the Register up to a period of three months.

(c) impose such fine as it may think fit, which may extend to rupees one lakh.

(4) The Director (Discipline) shall submit before the Board of Discipline all information and complaints where he is of the opinion that there is no prima facie case and the Board of Discipline may, if it agrees with the opinion of the Director (Discipline), close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter.]

21B. Disciplinary Committee. —

(1) The Council shall constitute a Disciplinary Committee consisting of the President or the Vice-President of the Council as the Presiding Officer and two members to be elected from amongst the members of the Council and two members to be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy: Provided that the Council may constitute more Disciplinary Committees as and when it considers necessary.

(2) The Disciplinary Committee, while considering the cases placed before it shall follow such procedure as may be specified.

(3) Where the Disciplinary Committee is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or both the First Schedule and the Second Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely: -- (a) reprimand the member.

(b) remove the name of the member from the Register permanently or for such period, as it thinks fit.

(c) impose such fine as it may think fit, which may extend to rupees five lakhs.

(4) The allowances payable to the members nominated by the Central Government shall be such as may be specified.]

"**29A. Power of Central Government to make rules:**

(1) The Central Government may, by notification, make rules to arry out the provisions of this Act.

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

(a) the manner of election and nomination in respect of members to the Council under sub-section (2) of Section 9; (b) the terms and conditions of service of the Presiding Officer and Members

of the Tribunal, place of meetings and allowances to be paid to them under sub-section (3) of Section 10B4;

(c) the procedure of investigation under sub-section (4) of Section 21 ;

(d) the procedure while considering the cases by the Disciplinary Committee under sub-section (2), and the fixation of allowances of the nominated members under subsection (4) of Section 21B;

(e) the allowances and terms and conditions of service of the Chairperson and members of the Authority and the manner of meeting expenditure by the Council under Section 22C; (f) the procedure to be followed by the Board in its meetings under Section 28C ; and

(g) the terms and conditions of service of the Chairperson and members of the Board under sub-section (1) of Section 28D.] ***(emphasis supplied)***

Rule 9 of the Rules, 2007 is extracted hereinbelow:

Rule 9. Examination of the Complaint

(1) The Director shall examine the complaint, written statement, if any, rejoinder, if any, and other additional particulars or documents, if any, and form his prima facie opinion as to whether the member or the firm is guilty or not of any professional or other 10 misconduct or both under the First Schedule or the Second Schedule or both.

(2) (a) Where the Director is of the prima facie opinion that, –

(i) the member or the firm is guilty of any misconduct under the First Schedule, he shall place his opinion along with the complaint and all other relevant papers before the Board of Discipline.

(ii) the member or the firm is guilty of misconduct under the Second Schedule or both the First and Second Schedules, he shall place his opinion along with the complaint and all other relevant papers before the Committee.

(b) If the Board of Discipline or the Committee, as the case may be, agrees with the prima facie opinion of the Director under clause (a) above, then the Board of Discipline or the Committee may proceed further under Chapter IV or V respectively.

(c) If the Board of Discipline or the Committee, as the case may be, disagrees with the prima facie opinion of the Director under clause (a) above, it shall either close the matter or advise the Director to further investigate the matter

(3) Where the Director is of the prima facie opinion that the member or the firm is not guilty of any misconduct either under the First Schedule or the Second Schedule, he shall place the matter before the Board of Discipline, and the Board of Discipline, −

(a) if it agrees with such opinion of the Director, shall pass order, for closure.

*(b) **if it disagrees with such opinion of the Director, then it may either proceed under chapter IV of these rules, if the matter pertains to the First Schedule, or refer the matter to the Committee to proceed under Chapter V of these rules, if the matter pertains to the Second Schedule or both the Schedules and may advise the Director to further investigate the matter.***

(4) The Director shall, after making further investigation as advised by the Board of Discipline under sub-rule (2) or (3) of this rule or by the Committee under sub-rule (2), shall

further proceed under this rule."

(emphasis supplied)

13. Section 21(1) empowers the Council to establish a Disciplinary Directorate for making investigations into the complaints received by it. The head of this authority is designated as Director (Discipline). Section 21(2) provides that the Director (Discipline), on receipt of any information or complaint, shall arrive at a *prima facie* opinion on the occurrence of the alleged misconduct. Section 21(3) states that should the Director (Discipline) arrive at a *prima facie* opinion that the member is guilty of professional misconduct, he shall refer the matter to the Board of Discipline or the Disciplinary Committee, depending on whether the alleged misconduct falls within the First Schedule or the Second Schedule or both. If the alleged misconduct falls within the First Schedule, the matter is

placed before the Board of Discipline and if it falls within the Second Schedule or in both the Schedules, the matter is placed before the Disciplinary Committee. Section 21(4) provides that the procedure for investigation would be as prescribed under the relevant rules.[1] In the event where the Complainant wishes to withdraw his/her complaint, Section 21(5) provides that the Director (Discipline) shall place the request for withdrawal before the Board of Discipline or the Disciplinary Committee, as the case may be, and the Board or Committee would take a final call in this regard.

14. The Board of Discipline is constituted under Section 21A of the Act. The Director (Discipline) is to function as the Secretary of the Board, as per Section 21A(1)(c) of the Act. Section 21A (2) provides that the Board shall follow a summary procedure in dealing with cases referred to it. Where the Board finds that a member is guilty of professional or other misconduct mentioned in First Schedule, it may resort to imposing any of the three punishments enumerated in Section 21A (3).

15. Section 21A (4) requires the Director (Discipline) to submit all information and complaints to the Board, where he is of the opinion that there is no *prima facie* case in the complaint. It further provides that if the Board agrees with the opinion of the Director (Discipline), it may close the matter and if it disagrees with the opinion, it may advise the Director (Discipline) to further investigate into the complaint.

16. Similar scheme to deal with complaints relating to misconduct as prescribed in the Second Schedule is found in Section 21B (1) to (4).

17. Section 29A is titled 'Power of Central Government to make rules'. Section 29A (1) enables the Central Government '*to make rules to carry out the provisions of this Act'.* Section 29A (2) sets out enumerated heads under which rules may be made. Rule 9(3), which is part of Rules, 2007 appears to have been made under Section 29A(2)(c). It is relevant to note

[1] Chartered Accountants' (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

that the power to make rules under sub-section (2) of Section 29A is '*without prejudice to the generality of the foregoing power'* provided for in Section 29A(1).

18. Having discussed the scheme of relevant provisions in the parent Act, we may now peruse the contents of Rule 9.

19. Rule 9 is titled 'Examination of Complaint'. Sub-clause (1) provides for the procedure to be followed on receipt of complaint. The Director (Discipline) is required to form his *prima facie* opinion as to whether the member is guilty or not of the alleged misconduct. Sub-clause (2) sets out the procedure to be followed in the event where the Director (Discipline) reaches a *prima facie* opinion that the member is guilty of professional misconduct. What is of utmost significance for us is to see the procedure to be followed when the Director (Discipline) comes to a *prima facie* opinion that the member is not guilty of alleged misconduct, as has been examined in the instant case. This can be found in sub-clause (3) of Rule 9. It provides that the Board can accept the opinion of the Director (Discipline) and pass an order for closure (Rule 9(3)(a)). Where the Board disagrees with the opinion of the Director (Discipline), it may proceed under Chapter IV of the Rules, 2007 if the matter pertains to the First Schedule or it may advise the Director to further investigate the matter. Similarly, the Board could refer the matter to the Disciplinary Committee for action under Chapter V if the matter pertains to the Second Schedule or it could advise the Director (Discipline) to conduct further investigation.

Analysis and Findings:

20. Now, let us contrast Section 21A (4) with Rule 9(3) to examine if there is any substance in the argument that Rule 9(3) is ultra vires Section 21A (4). In the event the Board disagrees with the opinion of the Director (Discipline), Section 21A(4) provides that the Board *may* advise the Director to further investigate the matter. However, Rule 9(3) does not limit itself to just this option. It also enables the Board to straightaway proceed to act by itself or refer the matter to the Disciplinary Committee, depending on whether the alleged misconduct relates to the First Schedule or Second Schedule. It is in this background that the learned counsel for the Appellant

has strenuously submitted that the Rule goes beyond the enabling power set out in the parent Act.

21. In *State of Tamil Nadu and Anr. v. P. Krishnamurthy* and Ors. **(2006) 4 SCC 517**, this Court recollected the following principles while adjudging the validity of subordinate legislation, including regulations:

15. There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognized that a subordinate legislation can be challenged under any of the following grounds:

(a) Lack of legislative competence to make the subordinate legislation.

(b) Violation of fundamental rights guaranteed under the Constitution of India.

(c) Violation of any provision of the Constitution of India.

(d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.

(e) Repugnancy to the laws of the land, that is, any enactment.

(f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules)

(emphasis supplied)

22. Of the six available grounds for challenging subordinate legislation, it is quite clear that the scope of the challenge raised in this petition is restricted to one ground in the instant case; that the Rule exceeds the limits of authority conferred by the enabling Act. Therefore, it becomes important to examine the scope of power available under the Act before we can adjudge whether the Rules exceed the limits of authority conferred by the enabling Act.

23. As we have noted earlier, the Rules, 2007, have been framed purportedly in exercise of the power conferred under Section 29A(2)(c) of the Act,

which enables the Central Government to make rules regarding '*the procedure of investigation under sub-section (4) of Section 21*'. However, the enumerated heads set out in Section 29A(2) cannot be read as exhaustive since the legislature has deployed the expression '*without prejudice to the generality of the foregoing provisions'* before enumerating the specific heads for exercising the rule-making power. In that sense, the power to make rules generally for carrying out the provisions of the Act is found in Section 29A(1). Section 29A (2) is only an illustrative list of subjects with respect to which the Central Government may make rules. The illustrative list of subjects cannot limit the scope of general power available under the wider rule-making power found in Section 29A(1).

24. Experience of legislative drafting in India has shown that, generally, the delegation of power to formulate rules follows a standardized pattern within statutes. Typically, a section of the statute grants this authority in broad terms, using phrases like *'to carry out the provisions of this Act'* or *'to carry out the purposes of this Act*.' Subsequently, another sub-section details specific matters or areas for which the delegated power can be exercised, often employing language such as *'in particular and without prejudice to the generality of the foregoing power*.' Judicial interpretation of such provisions underscores that the specific enumeration is illustrative and should not be construed as limiting the scope of the general power. This approach allows for flexibility in rulemaking, enabling the authorities to address unforeseen circumstances. A key principle emerges from this interpretation: even if specific topics are not explicitly listed in the statute, the formulation of rules can be justified if it falls within the general power conferred, provided it stays within the overall scope of the Act. This mode of interpretation has been categorised as the 'generality versus enumeration' principle in some precedents of this Court[2]. This delicate balance between specificity and generality in legal delegation is crucial for effective governance and adaptability to evolving legal landscapes.

[2] See, BSNL v. TRAI, (2014) 3 SCC 222; King Emperor v. Sibnath Banerji: AIR 1945 PC 156; Afzal Ullah v. State of U.P, AIR 1964 SC 264; Rohtak and Hissar Districts Electric Supply Co. Ltd. v. State of U.P.,AIR 1966 SC 1471; K. Ramanathan v. State of T.N. (1985) 2 SCC 116; D.K. Trivedi and Sons v. State of Gujarat, 1986 Supp SCC 20

25. For the sake of completeness, we may refer to some leading precedents of this Court which have discussed the '*generality versus enumeration'* principle.

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26. In *State of Jammu and Kashmir v Lakhwinder Kumar and Ors*., **(2013) 6 SCC 333**, this Court held that when a general power to make regulations is followed by a specific power to make regulations, the latter does not limit the former. This is the principle of 'generality vs enumeration':

a residuary provision can always be given voice.

27. In *Academy of Nutrition Improvement v. Union of India* (**2011) 8 SCC 274**, this Court had interpreted a pari materia expression "*in particular and without the generality of the foregoing power, such Rules may provide for all or any of the following matters*". This Court held as follows :

> *"……where power is conferred to make subordinate legislation in general terms, the subsequent particularisation of the matters/topics has to be construed as merely illustrative and not limiting the scope of the general power. Consequently, even if the specific enumerated topics in section 23(1A) may not empower the Central Government to make the impugned rule (Rule 44-I), making of the Rule can be justified with reference to the general power conferred on the central government under section 23(1), provided the rule does not travel beyond the scope of the Act*"

28. In the case of *State of Kerala v. Shri M. Appukutty (1963) 14 STC 242,* the provisions of Section 19 (1) and (2) (f) of the Madras General Sales Tax Act of 1939 came up for consideration of this Court. It was unsuccessfully argued therein that Rule 17(1) was ultra vires the rule making power specifically enumerated in Section 19(2)(f).

29. The relevant provisions involved there were similar in form to the applicable provisions in the instant case.

Section 19 (1),(2),2(f) read as follows:

(1) The State Government may make rules to carry out the purposes of this Act.

*(2) In particular and without prejudice to the generality of foregoing power such rules may provide for-- ***** (f) the assessment to tax under this Act of any turnover which has escaped assessment and the period within which such assessment may be made, not exceeding three years;*

Dealing with the objection raised, this Court observed:--

"..... Rule 17 (1) and (3A) ex facie properly fall under Section 19(2)(f). In any event as was said by the Privy Council in King Emperor v. Sibnath Banerji MANU/PR/0024/1945, the rulemaking power is conferred by Sub-section (1) of that section and the function of Sub-section (2) is merely illustrative and the rules which are referred to in Sub-section (2) are authorised by and made under Sub-section (1). ***The provisions of Sub-section (2) are not restrictive of Sub-section (1) as expressly stated in the words 'without prejudice to the generality of the foregoing power' with which Sub-section (2) begins and which words are similar to the words of Subsection (2) of Section 2 of the Defence of India Act which the Privy Council was considering....."***

(emphasis supplied)

30. While examining the "generality versus enumeration" principle, this Court, in *PTC India Ltd. v. Central Electricity Regulatory Commission*, (2010) 4 SCC 603, referred with approval to its earlier Judgement in *Hindustan Zinc Ltd. vs Andhra Pradesh State Electricity Board* (1991) 3 SCC 299, wherein the scope of Sections 49(1) & (2) of the Electricity Supply Act, 1948 fell for consideration. Under Section 49(1), a general power was given to the Board to supply electricity to any person not being a licensee, upon such terms and conditions as the Board thinks fit and the Board may, for the

purposes of such supply, frame uniform tariff under Section 49(2). The Board was required to fix uniform tariff after taking into account certain enumerated factors. In this context, this Court, in *Hindustan Zinc Ltd*., held that the power of fixation of tariff in the Board ordinarily had to be done in the light of specified factors; however, such enumerated factors in Section 49(2) did not prevent the Board from fixing uniform tariff on factors other than those enumerated in Section 49(2), as long as they were relevant and in consonance with the Act. This Court then referred, with approval, to its judgment in *Shri Sitaram Sugar Co. Ltd. vs Union of India* (1990) 3 SCC 223, wherein it was held that the enumerated factors/topics in a provision did not mean that the authority cannot take any other matter into consideration which may be relevant; and the words in the enumerated provision are not a fetter; they are not words of limitation, but are words for general guidance.

31. In *Afzal Ullah vs. The State of Uttar Pradesh* reported in 1963 SCC Online SC 76, it was argued that the impugned bye-laws were invalid, because they were outside the authority conferred on the delegate to make bye-laws by Section 298(2) of the Act, and it was also contended that the bye-laws were invalid for the additional reason that they were inconsistent with Section 241 of the Act. Rejecting the said contentions, this Court observed as follows:

"Even if the said clauses did not justify the impugned byelaw, there can be little doubt that the said bye-laws would be justified by the general power conferred on the Boards by s. 298(1). It is well-settled that the specific provisions such as are contained in the several clauses of s. 298(2) are merely illustrative and they cannot be read as restrictive of the generality of powers prescribed by s. 298(1) vide Emperor v. Sibnath Banerji & Ors MANU/PR/0024/1945. If the powers specified by s. 298(1) are very wide and they take in within their scope bye-laws like the ones with which we are concerned in the present appeal, it cannot be said that the powers enumerated under s. 298(2) control the general words used by s. 298(1). ***These latter clauses merely illustrate and do not exhaust all the powers conferred on the Board, so that any cases not falling within***

the powers specified by section 298(2) may well be protected by s. 298(1), provided, of course, the impugned bye-laws can be justified by reference to the requirements of s. 298(1)*. There can be no doubt that the impugned bye-laws in regard to the markets framed by respondent No. 2 are for the furtherance of municipal administration under the Act, and so, would attract the provisions of s. 298(1). Therefore we are satisfied that the High Court was right in coming to the conclusion that the impugned bye-laws are valid."*

(emphasis supplied)

32. From reference to the precedents discussed above and taking an overall view of the instant matter, we proceed to distil and summarise the following legal principles that may be relevant in adjudicating cases where subordinate legislation are challenged on the ground of being '*ultra vires*' the parent Act:

(a) The doctrine of ultra vires envisages that a Rule making body must function within the purview of the Rule making authority, conferred on it by the parent Act. As the body making Rules or Regulations has no inherent power of its own to make rules, but derives such power only from the statute, it must necessarily function within the purview of the statute. Delegated legislation should not travel beyond the purview of the parent Act.

(b) Ultra vires may arise in several ways; there may be simple excess of power over what is conferred by the parent Act; delegated legislation may be inconsistent with the provisions of the parent Act; there may be noncompliance with the procedural requirement as laid down in the parent Act. It is the function of the courts to keep all authorities within the confines of the law by supplying the doctrine of ultra vires.

(c) If a rule is challenged as being ultra vires, on the ground that it exceeds the power conferred by the parent Act, the Court must, *firstly*, determine and consider the source of power which is relatable to the rule. Secondly, it must determine the meaning of the subordinate legislation

itself and finally, it must decide whether the subordinate legislation is consistent with and within the scope of the power delegated.

(d) Delegated rule-making power in statutes generally follows a standardized pattern. A broad section grants authority with phrases like *'to carry out the provisions' or 'to carry out the purposes.'* Another sub-section specifies areas for delegation, often using language like *'without prejudice to the generality of the foregoing power.*' In determining if the impugned rule is intra vires/ultra vires the scope of delegated power, Courts have applied the '*generality vs enumeration*' principle.

(e) The "*generality vs enumeration*" principle lays down that, where a statute confers particular powers *without prejudice* to the generality of a general power already conferred, the particular powers are only illustrative of the general power, and do not in any way restrict the general power. In that sense, even if the impugned rule does not fall within the enumerated heads, that by itself will not determine if the rule is ultra vires/intra vires. It must be further examined if the impugned rule can be upheld by reference to the scope of the general power.

(f) The delegated power to legislate by making rules *'for carrying out the purposes of the Act*' is a general delegation, without laying down any guidelines as such. When such a power is given, it may be permissible to find out the object of the enactment and then see if the rules framed satisfy the Act of having been so framed as to fall within the scope of such general power confirmed.

(g) However, it must be remembered that such power delegated by an enactment does not enable the authority, by rules/regulations, to extend the scope or general operation of the enactment but is strictly ancillary. It will authorize the provision of subsidiary means of carrying into effect what is enacted in the statute itself and will cover what is incidental to the execution of its specific provision. In that sense, the general power cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself.

(h) If the rule making power is not expressed in such a usual general form but are specifically enumerated, then it shall have to be seen if the rules made are protected by the limits prescribed by the parent Act.

33. With this background in view, we may now apply the principles to the factual context obtained in the instant case.

34. In the instant case, the ultra vires challenge has been mounted on the ground that the impugned Rule exceeds the power conferred by the parent Act. If we look at the parent Act, the rule-making power has been conferred under Section 29A, which is titled as 'Power of the Central Government to make Rules'. While sub-clause (1) of Section 29A sets out the general power of delegation, sub-clause (2) provides for enumerated heads. As noted earlier, the power to make rules under the latter clause is without prejudice to the general power under the former clause. In exercise of the enabling power (Section 29A(2)(c)) to make rules relating to procedure of investigation under Section 21(4), the Rules 2007 have been made. Admittedly, Rule 9(3) goes beyond what is provided for under Section 21A(4) in terms of the options available to the Board of Discipline in case it disagrees with the opinion of the Director (Discipline). Other than the option of advising the director to further investigate, Rule 9(3) provides the additional option to the Board for proceeding to deal with the complaint by itself or referring it to the Disciplinary Committee, depending on whether the alleged misconduct falls under the First Schedule or the Second Schedule. But as we have seen from principles discussed above, the scrutiny cannot stop at examining if the impugned rule is relatable to any specific enumerated head. We must go further and examine if it can be related to the general delegation of power under Section 29A(1), which authorises the Central Government to make rules for carrying out the purposes of the Act.

35. Since the general delegation of power is without any specific guideline, it may be necessary to understand the object of the Act vis-à-vis the chapter on Misconduct. It is only then can we examine whether the impugned rule falls within the scope of such general power conferred.

Object of the CA Act vis a vis Chapter on Misconduct:

36. The Chartered Accountants Act, 1949, is a legislation that governs the regulation of the chartered accountancy profession in India. The chapter on "Misconduct" in the Chartered Accountants Act, 1949, plays a crucial role in maintaining the ethical standards of the profession in India. Its main objectives are to set ethical guidelines, prevent actions that may compromise public interests, ensure accountability among chartered accountants, and preserve the profession's reputation. This Chapter defines and prohibits professional misconduct, while aiming to uphold honesty, integrity, and professionalism in the practice of chartered accountancy. By addressing instances of misconduct, it establishes a framework for accountability, reinforcing the credibility of individual professionals and the reputation of the entire profession. To achieve these goals, the Act includes a disciplinary mechanism, ensuring a fair and transparent process for investigating and adjudicating alleged cases of misconduct.

37. Seen in this background, we have not the slightest hesitation to conclude that the impugned rule is completely in sync with the object and purpose of framing the Chapter on ‘Misconduct’ under the Act. As has been rightly argued by the learned counsel for the Respondent, accepting the contention of the Appellant will create an anomalous situation. The Director (Discipline) who functions as a secretary to the Board of Discipline as per

Section 21A (2) will be having greater powers than the Board itself. The ‘*prima facie*’ opinion of the Director will become nothing but a final opinion if the Board will have no option except to direct the Director (Discipline) to further investigate the matter. The Section is silent as to what would happen in a situation where the Director (Discipline) on further investigation concludes in accordance with his preliminary assessment. Therefore, even if we accept, for the sake of argument, that Rule 9(3) cannot be saved under Section 29A(2)(c), as it directly relates to furthering the purposes of the Act in ensuring that a genuine complaint of professional misconduct against the member is not wrongly thrown out at the very threshold, it can be easily concluded that the impugned Rule falls within the scope of the general delegation of power under Section 29A(1).

38. Accordingly, we dismiss this appeal. No costs.