State of Tamil Nadu

Vs

K. Sabanayagam

(S. B. Majmudar, M. Jaggannadha Rao JJ)

25.11.1997

JUDGMENT

S.B. MAJMUDAR, J.

1.Leave granted in the S.L.Ps.

2.As common questions of law and fact arise in this group of apeals they were heard together and are being disposed of by this common judgment. The State of Tamil Nadu and the Tamil Nadu State Housing Board (hereinafter referred to as 'the Housing Baord') as appellants in these appeals have raised a contention for our consideration as to whether the Payment of Bonus Act, 1965 (hereinafter referred to as 'the Act') will be applicable to the employees of the Housing Board during the relevant accounting yeras from 1978-79 ownwards. It is contended on behalf of the appellants that the employees of the Board will not be entitled to the statutory bonus under the Act on twin grounds. Firstly, in view of the statutory exclusion of the Housing Board from the applicability of the Act as per Section 32(v)(c) of the Act and secondly, on the ground that the State of Tamil Nadu for the relvant years had exercised its power of exempting the Housing Board under Section 36 of the Act From all the provisions of the Act. In the writ petitions filed by employees of the Housing Board the High Court of Madras has taken the view that the Housing Board is not entitled on the facts of the cases to earn statutory exemption under Section 32(v)(c) of the Act and the orders of exemption issued by the State of Tamil Nadu in exercise of its powers under Section 36 of the Act in favour of the housing Board for the relevant years, were not legally sustainable. The High Court has also taken the view that in any case the State of Tamil Nadu had no authority to retrospectively grant exemption under Section 36 of the Act for the earlier accounting years. Net result of the impugned orders is that the Housing Board has been directed to make payment of statutory bonus to the employees from accounting year 1978-79 onwards.

3.It may be mentioned that while admitting these appeals to final hearing the stay of impugned orders was not granted. Resultantly we are informed that but for one year, for all the rest of the years the amounts of bonus in dispute have already been released by the Housing Board and paid to its employees. Background facts and the relevant statutory scheme

4.For highlighting the aforesaid contoversy between the parties it is necessary to note a few introductory facts. The Housing Board is a statutory body established under the Tamil Nadu State Housing Board Act, 1961. As the Preamble of the said Act shows it is to provide for the execution of housing and improvemnt schemes, for the establishment of a State Housing Board and for certain other matters. By the Central Act, namely, the Payment of Bonus Act, 1965 every factory as defined by clause (m) of Section 2 of the Factories Act, 1946 and every other establishemnt in which twenty or more persons are employed on any day in the accouting year, are covered by the sweep of the Act as per Section 1 thereof. The employees of such establishments as per Section 6 of the Act are

entitled to be paid by their employers in an accountingyear, bonus, accordance with the provisions of the Act provided he has worked in the establishment for not less than thirty working days in that year. Section 10 which deals with 'Payment of minimum bonus', lays down that, 'subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of the accounting year commencing on any day in the year 1979 and in respect of every subsequent accounting year, a minimum bonus which shall be 8.33 per cent of the salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year'. Section 32 of the Act gives classes of employees who are statutorily exempted from the applicability of the Act. Relevant provisions thereof lay down that, 'nothing in this Act shall apply to-(i) .; (ii) .; (iii) .; (iv) .; (v) employees employed by-(a) .; (b) .; and (c) institutions (including hospitals, chambers of commerce and social welfare institutions) established not for purposes of profit'. Section 36 of the Act deals with 'Power of exemption' and reads as under:

> "36. Power of exemption.-If the appropriate Governemnt, having regard to the financial position and other relevant circumstances of any establishment or class of establishemnts, is of opinion that it will not be in public interest to apply all or any of the provisions of this Act thereto, it may, by notification in the Official Gazette, exempt for such period as may be specified therein and subject to such conditions as it may think fit to impose, such establishment or class of establishments from all or any of the provisions of this Act."

In exercise of its powers under Section 36 of the Act the State of Tamil Nadu by Government Order Ms. No. 2018 dated 31st October 1979 in the Housing and Urban Development Deopartment directed that the Tamil Nadu Housing Board was exempted from all the provisions of the Payment of Bomus Act, 1965 for a period upto accounting year 1977-78. A similar Govenment Order Ms. No.1033 in the same Department was issued on 23rd November 1982 exempting the Tamil Nadu Housing Board from all the provisions of the Payment of Bonus Act, 1965 for a further period upto acccounting year 1982-83. We are told that for subsequent years similar such Governemnt Orders under Section 36 of the Act were issued by the State of Tamil Nadu in favour of the Tamil Nadu Housing Board. The employees who were to get statutory bonus under the Act naturally felt aggrieved by the said exemption orders of the State of Tamil Nadu and moved various writ petitions in the High Court on diverse grounds. The earliest Petition No.2343 of 1981 before the High Court was heard by a learned Single Judge of the High Court, Mohan, J. (as he then was), wherein the claim of bonus was confined by the employee from accounting year 1978-79 onwards. This writ petition was allowed and the Housing Board was directed to pay the minimum statutory bonus to the employee from the accounting year 1978-79 onwards. The learned Single Judge voided the exemption orders issued by the State of Tamil Nadu under Section 36 of the Act qua the relvant accounting years. Writ Appeals preferred by the Housing Board as well as the State of Tamil Nadu were disposed of by the impugned common judgemnt by a Division Bench of the High Court speaking through Nainar Sundaram, J. (as he then was). That has resulted in Civil Appela No.4559 of 1989. Following this decisions the High Court also granted similar relief for successive years to the employees concerned after declaring the exemption orders for the relevant years, as issued by the State of Tamil Nadu undre Section 36 of the Act, to be null and void. That is how in this group of appelas the State of Tamil Nadu and the Housing Board have sought to re-agitate their main grievances against the claim of the employees for statutory bonus undre the Act for the relevant years. Rival contentions

5.Learned senior counsel, Shri R. Mohan, for the appellants vehementary contended that the High

Court in the impugned judgments has patently erred in taking the view that the State of Tamil Nadu in exercise of its power under Section 36 of the Act had no authority and jurisdiction to grant exemption retrospectively for the earlier accounting years. This submission was canvassed in the light of the aforesaid two Government Orders dated 31st October, 1979 and 23rd November 1982. It was next contended that even otherwise the Housing Board had earned statutory exemption under Section 32(v)(c) of the Act as it was a social welfare institution established not for the purposes of profit and consequently its employees could not claim any bonus under the Act. It was ultimately contended that in any view of the matter once power of exemption which is in the nature of conditional legislation was exercised by the State of Tamil Nadu under Section 36 of the Act, the orders of exemption for the relevant years as issued by the State of Tamil Nadu could not have been declared to be null and void on the ground that before invoking such power of exemption the State had not given opportunity of hearing to the employees concerned who were likely to be affected by the grant of such exemption.

6.Learned counsel for the respondent-employees represented by their unions on the other hand submitted that the impugned orders of the High Court were quite justified on the facts and circumstances of the cases. That the Government Order dated 23rd November 1982 was rightly held by the High Court to be inoperative so far as it tried to retrospectively grant the exemption under Section 36 of the Act for earlier accounting years to the Housing Board as such an exercise of power is not contemplated by the said Section. It was next contended that question of availability of statutory exemption to the Board under Section 32(v)(c) of the Act does not arise on the facts and circumstances of the present cases inasmuch as it was the stand of the Housing Board itself before the High Court and even before the State that the Act was applicable to it and it would have been required to pay the bonus and for exempting it from its liability the exemption powers of the State under Section 36 of the Act were invoked by the Board and that too successfully. It was submitted that questions whether the Housing Board was an institution in the nature of social welfare institution and whether it was established not for the purposes of profit, required investigation of facts and when such contentions which raise mixed question of law and fact were not canvassed earlier by the Housing Board and on the contrary the Housing Board had accepted its statutory liability to be coverred by the Act but for the invocation of the powers of the State under Section 36 it could be said that such contention on the facts of the present cases were waived by the Housing Board and the Housing Board was rightly held to be estopped from raising such contentions before the High Court as held in the impugned judgments. In the alternative it was tried to be submitted that even on merits this contention had no substance as the Housing Board in the light of the relevant provision of the Act cannot be said to be an institution established not for the purposes of profit. In this connection it was submitted that there was ample evidence on record including admissions on the part of the authorities of the Housing Board themselves that various other Housing Board like the West Bengal Housing Board, Gujarat Housing Board and other Housing Boards were playing bonus under the Act to their employees. That in view of this stand taken by the Board itself, for invoking the power of the exemption by the State Government under Section 36 of the Act, this Court may not examine the merits of this contention especially when bonus amounts for the relevant years have already been paid by the Housing Board to its employees. It as lastly contended that the High Court was justified in taking the view that the impugned exemption orders issued by the State from time to time were null and void as no opportunity of hearing was given to the employees by the State while issuing the impugned orders which had a direct pernicious and adverse effect on their civil rights and amounted to depriving them of their statutory rights of bonus under the Act. That implicit in Section 36 is the requirement for the appropriate Government to have a look at the rival contentions which may have to be put forward before the appropriate

Government by the claimants of exemption on the one hand and their employees likely to be adversely affected by such exemptions on the other hand, before such drastic power of exemption having pernicious civil consequences and evil effects on the employees on their pay packet could be visited on the employees for whom minimum statutory bonus as granted by the Act of the Parliament was a sort of a deferred wage Points for Consideration

7.In the light of the aforesaid rival contentions the following points arises for consideration:

> 1. Whether the exemption order dated 23rd November, 1982 is bad inasmuch as it seeks to retrospectively apply to earlier accounting years 1978-79, 1980-81 and 1981-82.
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> 2. Whether the provisions of the Act are not applicable to the Housing Board in view of Section 32(v)(c) of the Act.
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> 3. Whether the exemption orders issued by the State of Tamil Nadu from time to time during the relevant years as per Section 36 of the Act are null and void as no hearing was admittedly given by the state of Tamil Nadu to the employees likely to be affected by such exercise of power of exemption before issuing such orders.

8.We shall deal with these points for determination seriatim.

Point No.1

9.So far as the alleged retrospective effect of Government Order dated 23rd November, 1982 is concerned, we have to keep in view that earlier Government Order of exemption under Section 36 of the Act was dated 31st October, 1979. The said order recited that, 'in exercise of the powers conferred by section 36 of the Payment of Bonus Act 1965 (Central Act 21 of 1965), the Governor of Tamil Nadu hereby exempts the Tamil Nadu Housing Board, from all the provisions of the said Act for a further period upto the accounting year 1977-78'. That was followed by the impugned notification/Government Order Ms.No.1033 dated 23rd November, 1982. It recited that having read the earlier Government Order dated 31st October, 1979 and other relevant letters from the Chairman of the Housing Board, the Governor, in exercise of the powers conferred by section 36 of the Payment of Bonus Act, 1965 (Central Act, 21 of 1965), exempts the Tamil Nadu Housing Board, from all the provisions of the said Act for a further period upto the accounting year 1982-83. It was vehemently contended by learned senior counsel for the appellants that first notification of 31st October, 1979 exempted the Housing Board from the provisions of the Act for a further period upto accounting year 1977-78 and in continuation thereof the second notification was issued on 23rd November, 1982 by which exemption from the provisions of the Act was further extended upto the accounting year 1982-83 and, therefore, the second notification certainly sought to cover earlier accounting years 1978-79, 1979-80, 1980-81 and 1981-82. That such an exercise, according to learned senior counsel for the appellants, was legally permissible for the State under Section 36 of the Act as it was an exercise of power of condition a legislation and that the High Court had wrongly held that such a power could not be exercised retrospectively. We would have been required to closely examine this contention but for the fact that on the language of the notification dated 23rd November, 1982 it is not possible to countenance the contention of learned senior counsel for the appellants that the said notification on its express terminology sought to apply the not of exemption retrospectively for earlier years 1978-79 to 1981-82. On the language of notification it appears clear that even though the Governor had read the earlier Government Order

dated 31 October, 1979 as recited in the notification all that the Governor was pleased to order was that all the provisions of the Act will not apply to the Housing Board for a further period upto accounting year 1982-83. The notification is dated 23rd November, 1982. Therefore, from that date onwards till the end of the accounting year 1982-83 exemption was granted. Nowhere in the said notification it is stated that the author of the notification wanted the said notification to retrospectively cover even earlier accounting years which had already gone by. If such was the intention of the author of the notification would have clearly mentioned that the provisions of the Act would not apply for a further period from 1978-79 upto the accounting year 1982-83. Such terminology is conspicuously absent in the notification of 23rd November, 1982. We must, therefore, hold that the State of Tamil Nadu while issuing the notification of 23rd November 1982, for reasons best known to it, had thought it fit not to cover the earlier accounting years from 1978-79 to 1981-82 inspite of the fact the earlier notification under Section 36 of the Act had ceased to operate on the expiry of the accounting year 1977-78 as seen from the express wording of the earlier notification dated 31st October, 1979.

10.In view of the aforesaid conclusion of ours, therefore, it will not become necessary to examine the further question whether the notification dated 23d November, 1982 could be legally issued with any retrospective effect. This question becomes academic in the light of the express language of the said notification as discussed by us earlier. We, therefore, hold that the ultimate decision of the High Court that the notification dated 23rd November, 1982 had no retrospective effect, is justified but we express no opinion on the question whether the purported retrospective effect given by the notification to the claim of exemption for the earlier accounting years was legally permissible under Section 36 or not. This wider question is kept open. Point No.1 is, therefore, answered in the negative for the aforesaid reasons which are different from those which appealed to the High Court.Point No.2

11.The contention of learned senior counsel for the appellants is that the Bonus Act itself does not apply to the Housing Board in view of Section 32(v)(c) of the Act extracted hereinabove. A mere look at the said provision shows that the Bonus Act will not apply to employees employed by the establishment established not for the purposes of profit. The appellants contention is two-fold. Firstly it is a social welfare institution and secondly it is established not for the purposes of profit. It is statutorily established for undertaking beneficial activities for the people of Tamil Nadu with a view of supplying them housing accommodation at reasonable costs and to save them from exploitation by builders; that the Housing Board has also to undertake various other beneficial functions of public interest as per the provisions of the Act. So far as this contention is concerned the High Court in the impugned judgment has taken the view that by their own act the Housing Board acted that the Act applies to it and, therefore, it, by passing various resolutions sought for exemption from the Act by invoking the powers of the State of Tamil Nadu under Section 36 of the Act. In this connection it has to be kept in view that before Section 32 (v)(c) of the Act can be pressed in service the following factual aspects have to be pleaded and proved by the Housing Board.

1. That it is a social welfare institution;
2. 2. That it is established not for the purposes of profit; and

    3. Even otherwise it is an institution which is established from its inception not for the purposes of profit.

This would require investigation into facts as to whether the Statute under which the Housing Board

is created enjoins upon the Housing Board functions which are likely to generate profit and whether in fact profit gets generated by the exercise of permissible statutory functions by the Housing Board. These questions which are factual questions would be required to be considered if properly pleaded by the Housing Board. Instead of pressing in service these factual aspects for consideration the Housing Board had consistently relied upon the exemption power of the State Government under Section 36 of the Act for the accounting years in question. In this connection the High Court relied upon various proceedings of the Housing Board spread over years wherein the Housing Board has consistently taken the stand that it would require exemption from the provisions of the Act by invoking the powers of the State under Section 36 of the Act. We have gone through these relevant proceedings referred to by the High Court in the impugned judgment and these proceedings dated 28th February 1978 and 04th May 1979 clearly give out a picture about the stand of the Housing Board even before the present litigation saw the light of day. Once it is the case of the Housing Board itself that the Act would apply to it in the light of the statutory functions carried out by it and, therefore, there was need to get exemption from the Act under Section 36 of the Act no fault can be found with the reasoning of the High Court that the Housing Board had waived its contentions that there was a statutory exemption for the Housing Board as per Section 32(v)(c) of the Act. It is obvious that if the Housing Board was statutorily exempted under the said provision there was no need for the Housing Board to invoke the powers of the State of Tamil Nadu under Section 36 of the Act for getting exemption from the Act by satisfying the State of Tamil Nadu that it is an establishment which in public interest requires such exemption having regard to its financial position and other relevant circumstances. Simultaneous invocation of Sections 32(v)(c) and 36 of he Act during the course of present proceedings would indicate that the Housing Board tried to blow hot and cold at the same time by taking inconsistent positions. In fact the claim for statutory exemption under Section 32(v)(c) of the Act cannot stand if the power of exemption of the State Government under Section 36 is invoked by Housing Board. Similarly Section 36 of the Act would get out of picture once Section 32(v)(c) of the Act was resorted to by the Housing Board. But both the provisions could not be simultaneously resorted to. Under these circumstances, therefore, the High Court was right in not considering the case of the Housing Board for statutory exemption under Section 32(v)(c) of the Act for the relevant accounting years wherein the Housing Board had tried to obtain and actually got orders of exemption under Section 36 of the Act. In this connection it is useful to refer to the Notes of proceedings of 04th May, 1979 under Item 277 of the agenda of the Special Board meeting of the Housing Board wherein its Chairman had prepared the Note to the following effect:

> ".The Tamil Nadu Housing Board was exempted from the provisions of the Payment of Bonus Act under Section 36 of the Act of (sic) the temporary periods upto the end of 1973-74. This exemption had necessarily to be obtained for the reason that the Tamilnadu Housing Board is governed under the Industrial Disputes Act according to the orders issued in G.O.Ms. No. 9139, H.U.III/2/69-2, dated 14.3.69(copy appended herewith) when the Housing Board is governed under the Industrial Disputes Act, the applicability of the Bonus Act is not obligatory but it is statutory. As the financial position of the Board in the past was not sound enough, the payment exemption was previously sought for by the Board. "

In the said Note it has been further mentioned as under:

> "Under the rules, the payment of minimum bonus will be 8.1/3% of the pay for persons who are drawing less than Rs.1600/- per month, subject to a maximum of Rs. 750/- per annum. Presently, the West Bengal Housing Board and Gujarat Housing

> Board are paying bonus for their employees. It is also ascertained from the Government of West Bengal that they are making payment of bonus to their employees at the rate of 8.1/3% treating the Board as an 'Industry' under the Industrial Disputes Act. The payment is made by them their revenues only, which they are able to earn by adding different profits in the sale of buildings by public auctions etc., on the same analogy, the Housing Board may also derive income in the near future and there may not be any difficulty in meeting this expenditure in this regard from its available funds. Besides, the Housing Board with its assets and liabilities is earning more and more every years. The income derived by way of rental, leasing of shops and stalls, etc., will undoubtedly go towards profit to certain extent.
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> In the circumstances, it appears not necessary to seek for the exemption of the Government from the payment of minimum bonus of 8.1/3% which is a statutory right as per the orders issued in G.OMs.No.1045. Finance, dated 1.11.1977. The Government have also directed that when payment of bonus to employees of the public sector undertakings is strictly in accordance with the provisions of the Bonus Act. Such cases need not be referred to the Government for approval. No deviation from the Bonus Act should normally be made. However, if any deviation is proposed to be made by way of payment of ex gratia or any other incentive in cash or any kind, then only it should carry the prior approval of the Government."

In view of this clear stand taken by the Chairman of the Housing Board at the relevant time it becomes obvious that it was never in contemplation of the Housing Board that it was statutorily exempted from the Act and from the obligation to pay the minimum bonus to the employees as per Section 32(v) (c) of the Act when other Housing Boards as mentioned therein were also paying bonus to their employees. It was also noted by the Housing Board in these proceedings spread over years that other Housing Boards like West Bengal Housing Board and Gujarat Housing Board were also paying bonus to their employees. Under these circumstances, the Housing Board had rightly taken the stand that the Payment of Bonus Act would apply to it and that is the reason why it sought exemption from the operation of the Act under Section 36 from the Tamil Nadu Government from time to time.

12.We may mention that by a decision of a Bench of two learned Judges of this Court in the case of Housing Board of Haryana Vs Haryana Housing Board Employees' Union and others [(1996)1 SCC 95] Bonus Act is held applicable to Haryana Housing Board by holding that it is not entitled to statutory exemption from the Act under Section 32 as a local authority. We are informed that accordingly bonus is being paid by the said Board to its employees as per the Bonus Act.In this connection it is, therefore, too late in the day for the Tamil Nadu Housing Board to take a somersault and to try to submit that despite its consistent course of conduct spread over decades accepting the position that it was statutorily liable to pay the minimum bonus as per the Act, but for the exemption sought by it under Section 36 of the Act, in fact the Act itself did not applying to it under Section 32(v)(c) of the Act and all attempts to get exemption from the Act under Section 36 were misconceived or uncalled for or an exercise in futility. We must, therefore, proceed on the basis that it was an admitted position on behalf of the Housing Board during the relevant accounting years with which we are concerned that it was governed by the provisions of the Act and but for exemption under Section 36 of the Act it would be bound to pay the minimum statutory bonus as laid down by the Act to its employees. On the basis of this admitted position and stand on behalf of the Housing Board the High Court was quite justified in observing that the Housing Board had

waived its objections regarding non-applicability of the Act under Section 32(v)(c) of the Act in the present cases. There is not question of any estoppel against Statute as tried to be submitted by learned senior counsel for the appellants in this connection. On factual aspects if a consistent stand is taken by the Housing Board to the effect that it is governed by the Act, implicit in the stand is the admission on facts that statutory exemption under Section 32(v)(c) of the Act factually is not earned by the Board. When on facts the Housing Board has not thought it fit to raise such a factual dispute or contention for the relevant accounting years its stand admitting the non-existence of the relevant data for invoking Section 32(v)(c) of the Act must be held binding to the Housing Board. It is obvious that facts which are admitted need not be proved. The Housing Board itself by its conduct admitted non-existence of relevant factual data for invoking the powers under Section 32(v)(c) of the Act. Therefore, it can certainly be held to be bound by its admissions on these facts and it can at least to the lowest be said to have waived its contention in this connection for the relevant accounting years. It would amount to estoppel on facts and not on law and would also certainly amount to a conscious giving up of its claim for statutory exemption under the said provision. Thus on the principle of waiver and estoppel the second contention of the appellants has to be repelled as has been rightly done by the High Court. Point No.2 is, therefore answered in the negative.

Point No.3

13.This takes us to the last contention canvassed on behalf of the appellants. It is true that Section 36 of the Act is held by a Constitution Bench of this Court to be a piece of conditional legislation. In the case of Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union [(1967) 1 SCR 15] the majority of the Constitution Bench speaking through J.C.Shah, J. while interpreting Section 36 of the Act has made the following pertinent observations:

> "By Sec.36 the appropriate Government is invested with power to exempt an establishment or a class of establishments from the operation of the Act, provided the Government is of the opinion that having regard to the financial position and other relevant circumstances of the establishment, it would not be in the public interest to apply all or any of the provisions of the Act, Condition for exercise of that power is that the Government holds the opinion that it is not in the public interest to apply all or any of the provisions of the Act to an establishment or class of establishments, and that opinion is founded on a consideration of the financial position and other relevant circumstances. Parliament has clearly laid down principles and has given adequate guidance to the appropriate Government in implementing the provisions of Sec.36. The power so conferred does not amount to delegation of legislative authority. Section 36 amounts to conditional legislation, and is not void. Whether in a given case, power has been properly exercised by the appropriate Government would have to be considered when that occasion arises."

The said observations have been made for repelling the challenge to the vires of Section 36 of the Act on the ground that it amounted to excessive delegation of legislative power or was violative of Article 14 of the Constitution of India. The question with which we are concerned in the present proceedings was not on the anvil of scrutiny before the Constitution Bench of this Court in that case, namely, whether before exercising powers under Section 36 as a delegate of conditional legislative function the appropriate Government was estopped from considering the rival version or rebuttal evidence that may be offered by the employees whose employer seeks exemption from the Act under Section 36 thereof. The distinction between delegated legislation and conditional legislation is a clear and well settled one. In this connection we may usefully refer to a Constitution

Bench decision of this Court in the case of Hamdard Dawakhana (Wakf) Lal Kaun, Delhi and another Vs. Union of India and others [(1960) 2 SCR 671]. Kapur, J. speaking for the Constitution Bench has made the following pertinent observations at page 695 of the Report:

> ".... The distinction between conditional legislation and delegated legislation is this that in the former the delegate's power is that of determining when a legislative declared rule of conduct shall become effective: Hampton & Co. Vs. U.S. [276 U.S.394] and the latter involves delegation of rule making power which constitutionally may be exercised by the administrative agent. This means that the legislature having laid down the broad principles of its policy in the legislation can then leave the details to be supplied by the administrative authority. In other words by delegated legislation the delegate completes the legislation by supplying details within the limits prescribed by the statute and in the case of conditional legislation the power of legislation is exercised by the legislature conditionally leaving to the discretion of an external authority the time and manner of carrying its legislation into effect as also the determination of the area to which it is to extend; [The Queen v. Burah (1878) 3 App. Cas. 889; Russell Vs. The Queen (1882) 7 App. Cas, 829, 835; King Emperor Vs. Benoarilal Sarma (1944) L.R.72 I.A. 57; Sardar Inder Singh Vs. State of Rajasthan (1957) SCR 605]. Thus when the delegate is given the power of making rules and regulations in order to fill in the details to carry out and subserve the purposes of the legislation the manner in which the requirements of the statute are to be met and the rights therein created to be enjoyed it is an exercise of delegated legislation. But when the legislation is complete in itself and the legislature has itself made the law and the only function left to the delegate is to apply the law to an area or to determine the time and manner of carrying it into effect, it is conditional legislation."

It is thus obvious that in the case of conditional legislation, the legislation is complete in itself but its operation is made to depend on fulfilment of certain conditions and what is delegated to an outside authority, is the power to determine according to its own judgment whether or not those conditions are fulfilled. In case of deleted legislation proper, some portion of the legislative power of the Legislature is delegated to the outside authority in that, the Legislature, though competent to perform both the essential and ancillary legislative functions, performs only the former and parts with the latter, i.e., the ancillary function of laying down details in favour of another for executing the policy of the statute enacted. The distinction between the two exists in this that whereas conditional legislation contains no element of delegation of legislative power and is, therefore, not open to attack on the ground of excessive delegation, delegated legislation does confer some legislative power on some outside authority and is therefore open on attack on the ground of excessive delegation. In this connection we may also refer to a decision of this Court rendered in the case of Sardar Inder Singh Vs. State of Rajasthan [AIR 1957 SC 510] wherein it is laid down that when an appropriate Legislature enacts a law and authorises an outside authority to bring it into force in such area or at such time as it may decide, that is conditional and not delegated legislation.

A number of decisions of this Court were pressed in service by the learned senior counsel for the appellants to submit that there is no question of giving any hearing to the affected parties by an agent who exercises conditional legislative power. We may briefly refer to them.

In the case of Tulsipur Sugar Co. Ltd. Vs. The Notified Area Committee Tulsipur [(1980) 2 SCC 295] Venkataramiah J. speaking for this Court had to consider the nature of power entrusted to the

State under Section 3 of U.P. Tower Areas Act, 1914 under which the State Government by notification could declare and define two areas where the U.P. Town Areas Act could apply. Considering this exercise of the power being in the nature of a conditional legislation it was held that the power of the Legislature to make a declaration under that Section is legislative in character because the applicability of the rest of the provisions of the Act to the geographical area which is declared as town area is dependent upon such declaration. The maxim of audi alteram partem does not become applicable to the case by necessary implication. Section 3 does not require the State Government to make declaration after giving notice of its intention so to do to the members of the public and inviting their representations regarding such action. Our attention was also invited to a decision of this Court in the case of Union of India and another Vs. Cvnamide India Ltd. and another [(1987) 2 SCC 720]. In that case the Court was concerned with the question whether price fixation under Paragraph 3 of Drugs (Price Control) Order, 1979 was an executive function or a legislative function. Treating it to be a legislative function Chinnappa Reddy, J., speaking for the Court observed that the legislative action, plenary or subordinate, is not subject to rules of natural justice. In the case of Parliamentary legislation, the proposition is self-evident. In the case of subordinate legislation, it may happen that Parliament may itself provide for a notice and for a hearing in which case the substantial non-observance of the statutorily prescribed mode of observing natural justice may have the effect of invalidating the subordinate legislation. But, where the legislature has not chosen to provide for any notice or hearing, no one can insist upon it and it will not be permissible to read natural justice into such legislative activity. It was further observed in paragraph 27 of the Report that the price fixation under paragraph 3 of the said Order being a legislative activity, the principles of natural justice are not attracted. In this connection Chinnappa Reddy, J., in paragraph 7 of the Report has made the following pertinent observations:

> "... A price fixation measure does not concern itself with the interests of an individual manufacturer or producer. It is generally in relation to a particular commodity or class of commodities or transactions. It is a direction of a general character, not directed against a particular situation. It is conceived in the interests of the general consumer public. The right of the citizen to obtain essential articles at fair prices and the duty of the State to so provide them are transformed into the power of the State to fix price and the obligation of the producer to charge no more than the price fixed. Viewed from whatever angle, the angle of general application, the prospectiveness of its effect, the public interest served, and the rights and obligations flowing therefrom, there can be no question that price fixation is ordinarily a legislative activity. Price fixation may occasionally assume an administrative or quasi-judicial character when it relates to acquisition or requisition of goods or property from individuals and it becomes necessary to fix the price separately in relation to such individuals. Such situations may arise when the owner of property or goods is compelled to sell his property or goods to the government or its nominee and the price to be paid is directed by the legislature to be determined according to the statutory guidelines laid down by it, in such situations the determination of price may acquire a quasi-judicial character. ."

The aforesaid observations clearly show that even while exercising a delegated legislative function or while acting in exercise of conditional legislative power the delegate may in a given case be required to consider view point of rival parties which may be likely to be affected by the exercise of such power. We must keep in view that Section 36 is not held to be a piece of delegated legislation as authoritively ruled by the Constitution Bench of this Court in Jalan Trading Co.'s case (supra). Therefore, we must proceed on the basis that it is a piece of conditional legislation only.

14.It will be noticed from the above rulings in Hamdard Dawakhana (supra), Sardar Inder Singh (supra) and Tulsipur Sugar Co. Ltd. (supra) which are cases of 'conditional legislation' that this Court while dealing with mere extension of the provisions of an Act to other areas, persons etc. has categorically held the same to be 'conditional' legislation. On the other hand 'price fixation' etc. was treated in Cynamide (supra) as 'delegated' legislation, the reason being that in the case of delegated legislation the Legislature lays down the policy broadly leaving it to the delegate to supply details while in the case of conditional legislation the legislation is complete and the Legislature leaves it to the delegate to exercise discretion as to the time and manner of carrying the legislation into effect as also the determination of the area to which it is to extend. This is clear from the decision of the Constitution Bench in Hamdard Dawakhana's case (supra). In fact, even in Cynamide case (supra), which is a case of delegated legislation dealing with price fixation. Chinnappa Reddy, J. pointed out that an action of the delegate, while supplying details of the legislation lays down the policy for the future as in price fixation cases and therefore the action of the delegate is legislative in character and precludes application of principles of natural justice. But the learned Judge agreed that where the delegate is making factual decisions on the basis of past or existing facts, it amount to 'administrative adjudication' and different considerations can apply. The learned Judge said that there is a real distinction between a 'legislative act' and 'administrative adjudication' (p.736):

> " ... adjudication determines past and present facts and declares rights and liabilities while legislation includes the future course of action."

and quoted Schwartz's Administrative Law (1976 Edn. pp 143-144). See now Schwartz (1991 Ed. 163-64) quoting Scalia, J. in Bowen Vs. Georgetown University Hospital (1988) 488 US (217 and 221), to the effect that:

> "a rule is a statement that has legal consequences only for the future"; and "adjudication deals with what the law was, rule making deals with what the law will be."

15.Oliver Wendell Holmes said that a "rule is the skin of a living policy. it hardens an inchoate normative judgment into the frozen form of words . Its issuance marks the transformation of policy from the private wish to public expectation. the framing of a rule is the climactic act of the policy making process. [Quoted by Prof. Colin Diver, Dean of Pennsylvanic Law School in 'Making Regulartory Policy' Ed. Keith Hawkins & John Thompson 1989 p.199) (Referred to in Rule Hawking- How Government Agencies Write Law and make policy - Cornetius M.Kerwin, 1994, page 3)]. Kerwin says at page 7 -"Rules, like legislation, attempt to structure the future. By creating new conditions, eliminating existing ones, or preventing other from coming into being rules implement legislation that seeks to improve the quality of life. The term 'future effect' is thus a crucial element in the definition of rules because it allows a clear contrast to situations in which agencies issue decisions, acting in their judicial capacity, .An order applies existing rules to past or existing circumstances. Although an order may have a future effect, .its primary purpose is not the creation of policy or law to create new conditions." [Emphasis supplied]

16.Conditional legislation can, therefore, be broadly classified into three categories

17.In the first category when the Legislature has completed its task of enacting a Statute, the entire superstructure of the legislation is ready but its future applicability to a given area is left to the subjective satisfaction of the delegate who being satisfied about the conditions indicating the ripe time for applying the machinery of the said Act to a given area exercises that power as a delegate of

the parent legislative body. Tulsipur Sugar Co.'s case (supra) is an illustration on this point. When the Act itself is complete and is enacted to be unformly applied in future to all those who are to be covered by the sweep of the Act, the Legislature can be said to have completed its task. All that it leaves to the delegate is to apply the same uniformly to a given area indicated by the parent Legislature itself but at an appropriate time. This would be an act of pure and simple conditional legislation depending upon the subjective satisfaction of the delegate as to when the said Act enacted and completed by the parent Legislature is to be made effective. As the parent Legislature itself has laid down a binding course of conduct to be followed by all and sundry to be covered by the sweep of the legislation and as it has to act as a binding rule of conduct within that sweep and on the basis of which all their future actions are to be controlled and guided, it can easily be visualised that if the parent Legislaturue while it enacted such law was not required to hear the parties likely to be affected by the operation of the Act, its delegate exercising an extremely, limited and almost ministerial function as an agent of the principal Legislature applying the Act to the area at an appropriate time is also not supposed and required to hear all those who are likely to be affected in future by the binding code of conduct uniformly laid down to be followed by all within the sweep of the Act as enacted by the parent Legislature.

18.However, there may be second category of conditional legislations wherein the delegate has to decide whether and under what circumstances a completed Act of the parent legislation which has already come into force is to be partially withdrawn from operation in a given area or in given cases so as not to be applicable to a given class of persons who are otherwise admittedly governed by the Act. When such a power by way of conditional legislation is to be exercised by the delegate a question may arise as to how the said power can be exercised. In such an eventuality if the satisfaction regarding the existence of condition precedent to the exercise of such power depends upon pure subjective satisfaction of the delegate and if such an exercise is not required to be based on the prima facie proof of factual data for and against such an exercise and if such an exercise is to uniformly apply in future to a given common class of subjects to be governed by such an exercise and when such an exercise is not to be confined to individual cases only, then even in such category of cases while exercising conditional legislative powers the delegate may not be required to have an objective assessment after considering rival versions on the data placed before it for being taken into consideration by it in exercise of such power of conditional legislation. For example if a tariff is fixed under the Act and exemption power is conferred on the delegate whether to grant full exemption or partial exemption from the tariff rate it may involve such an exercise of conditional legislative function wherein the exercise has to be made by the delegate on its own subjective satisfaction and once that exercise is made whatever exemption is granted or partially granted or partially withdrawn from time to time would be binding on the entire class of persons similarly situated and who will be covered by the sweep of such exemption, partial or whole, and whether granted or withdrawn, wholly or partially, and in exercise of such a power there may be no occasion to hear the parties likely to be affected by such an exercise. For example from a settle tariff say if earlier 30% exemption is granted by the delegate and then reduced to 20% all those who are similarly situated and covered by the sweep of such exemption and its modification cannot be permitted to say in the absence of any statutory provisions to that effect that they should be given a hearing before the granted exemption is wholly or partially withdrawn.

19.In the aforesaid first two categories of cases delegate who exercises conditional legislation acting on its pure subjective satisfaction regarding existence of conditions precedent for exercise of such power may not be required to hear parties likely to be affected by the exercise of such power. Where the delegate proceeds to fill up the details of the legislation for the future-which is part of the integrated action of policy-making for the future, it is part of the future policy and is legislative. But

where he merely determines either subjectively or objectively-depending upon the "conditions" imposed in the statute permitting exercise of power by the delegate-there is no legislation involved in the real sense and therefore, in our opinion, applicability of principles of fair play, consultation or natural justice to the extent necessary cannot be said to be foreclosed. Of course, the fact that in such cases of 'conditional legislation' these principles are not foreclosed does not necessarily mean that they are always mandated. In a case of purely ministerial function or in a case where no objective conditions are prescribed and the matter is left to the subjective satisfaction of the delegate (as in categories one and two explained above) no such principles of fair play, consultation or natural justice could be attracted. That is because the very nature of the administrative determination does not attract these formalities and not because the determination is legislative in character. There may also be situations where the persons affected are unidentifiable class of persons or where public interest or interests of State etc. preclude observance of such a procedure.

20.But there may be a third category of cases wherein the exercise of conditional legislation would depend upon satisfaction of the delegate on objective facts placed by one class of persons seeking benefit of such an exercise with a view to deprive the rival class of persons who otherwise might have already got statutory benefits under the Act and who are likely to lose the existing benefit because of exercise of such a power by the delegate. In such type of cases the satisfaction of the delegate has necessarily to be based on objective consideration of the relevant data for and against the exercise of such power. May be such an exercise may not amount to any judicial or quasi-judicial function, still it has to be treated to be one which requires objective consideration of relevant factual data pressed in service by one side and which could be tried to be rebutted by the other side who would be adversely affected if such exercise of power is undertaken by the delegate. In such a third category of cases of conditional legislation the Legislature fixes up objective conditions for the exercise of power by the delegate to be applied to past or existing facts and for deciding whether the rights or liabilities created by the Act are to be denied or extended to particular areas, persons or groups. This exercise is not left to his subjective satisfaction nor it is a mere ministerial exercise. Section 36 of the Act with which we are concerned falls in this third category of conditional legislative functions. A mere look at the said Section shows that before an appropriate Government can form its opinion regarding grant of partial or full exemption to any establishment or class of establishments which are otherwise already covered by the sweep of the Act the following factual conditions must be found to have existed at the relevant time to enable the delegate to exercise its powers under the Act:

1. The financial position of the establishment or class of establishments, as the case may be, must be such that it would not be in public interest to apply all or any of the provisions of the Act to such establishment or establishments.

2. There may be other relevant circumstances pertaining to such establishment or establishments which would require exercise of such power of exemption.

3. Such exercise must be in public interest as a whole and not confined to the personal or private interest of the establishment or establishments concerned.

Now it is obvious that but for the exercise of power of exemption under Section 36 the employees of an institution governed by the sweep of the Act would be entitled to minimum statutory bonus as per Section 10 of the Act. It has also to be kept in view that Bonus Act is a piece of welfare legislation enacted for the benefit of a large category of workmen seeking a living wage to make their lives more meaningful and for fructifying the benevolent guarantee of Article 21 of the

Constitution of India. Bonus is treated as deferred wage. When the Parliament in its wisdom has enacted such a beneficial piece of social legislation which already guarantees minimum statutory bonus to employees governed by it, if their employers are to be allowed to earn exemption from the sweep of such a beneficial legislation which would ipso facto adversely affect entire class of their employees. The conditions for exercise of such power of exemption have to be strictly and objectively fulfilled by the repository of such a drastic power. A statutory right already accrues to employees under the Act. If the establishment employing such workmen or employees is desirous of depriving the statutory right of minimum bonus to its employees it may move the appropriate Government for exemption under Section 36 of the Act as has been done in the present case by the Housing Board obviously confining its request to the accounting years in question. It is obvious that when such an establishment moves the appropriate Government invoking its power of exemption it has to submit relevant factual data about its financial position and other relevant circumstances in which it is placed during the relevant year which would necessitate the appropriate Government in public interest and not necessarily only in the private interest of such employer or establishment to get satisfied that it should be exempted and insulated from the rigours of the provisions of the Act guaranteeing statutory minimum bonus to its employees. Such establishment, therefore, would naturally point out that its financial position and other relevant circumstances are such that it may be that if it is required to pay the minimum bonus to its employees it would not only be a catastrophe for such establishment or class of establishments but a situation might arise when in public interest such establishments in order that they may effectively exist and may not be wiped off, may be given a statutory protection by way of exemption from the operation of the relevant provisions of the Act by the appropriate Government under Section 36 of the Act. It is obvious that when such a case is tried to be made out by the establishment concerned invoking powers of the State under Section 36, the State would not act merely as a post office and accept as a gospel truth what the establishment states. It will have to apply its objective mind on the relevant data before it can legitimately exercise its power of exemption under Section 36 of the Act qua such an establishment or a class of them. While exercising that power the data which would be available from the establishment would obviously be one-sided data in support of its claim for exemption. The employees who are likely to be deprived of their minimum statutory bonus as per the Act would be the rival class of person who are necessarily likely to be adversely affected if such exemption is granted to the establishment on the basis of the one-sided data in support of its claim. Therefore, in the absence of any rebuttal data furnished by the other side which is likely to be affected by such an exercise, namely, the employees the opinion arrived at by the appropriate Government, purely based on the one-sided version and data submitted by establishment of a class of establishments for claiming exemption, would be a truncated opinion which would necessarily not amount to an opinion on all relevant facts placed before it for and against the exercise of such power of exemption qua a given establishment or a class of establishments. If such data in rebuttal is not allowed to be furnished to the appropriate Government before it decides to exercise its power of exemption under Section 36 of the Act qua the establishment or a class of establishments its decision would be always remain a truncated or a lopsided one and would be liable to be voided on the ground of non-application of mind on relevant facts and data. It would remain a still-born decision and the moment it is challenged in a competent court it would be liable to be struck down immediately and for consideration of such a challenge the cometent court seized of the matter would naturally require the other side, which is likely to be affected by such an exercise of power of exemption, to furnish its data by way of rebuttal and once such material is furnished the truncated and one-sided decision of the appropriate Government would be required either to be re-considered by the Government itself or the court may be required to perform that task which was left incomplete by the appropriate Government while arriving at its opinion for exempting the claimant-establishment from the rigours of the Act. In that eventuality

there would always be the necessity of remanding the proceedings for re-consideration by the appropriate Government and then the appropriate Government will have to consider not only the data furnished by the establishment claiming the exemption but also the data in rebuttal which will travel to the appropriate Government via the court's order and thereafter the appropriate Government will have to undertake the very same exercise once again de novo under Section 36 of the Act and at that stage it will have the benefit of comprehensive consideration of the data furnished by the claimant-establishment for exemption on the one hand and the rival data furnished in rebuttal by the aggrieved employees on the other and then the opinion would become comprehensive and objective. In the setting of the Section, therefore, and the way it will work, as discussed earlier, implicit in the Section is the direction to the appropriate Government by the Legislature that it should form its opinion on objective facts furnished not only by the establishment or a class of establishments claiming such exemption but also by the employees who are likely to be affected by the exercise of such power and who should necessarily get an opportuninity to submit their material in rebuttal. if this requirement is not read in the Section the exercise of power of exemption qua the establishment or a class of establishments which will have a direct pernicious adverse effect on the employees who would otherwise earn statutory benefit of the provisions of the Act would always remain a truncated, inchoate, half-baked and a still-born exercise of power and only on remand by competent court the exercise would become an informed one. Thus the submission of learned senior counsel for the appellants would make the exercise under Section 36 of the Act one in fultility. To instill life in such an exercise and to make it comprehensive and kicking it has to be held that before an appropriate Government, which is approached by an establishment or a class of establishments for exempting them from the relevant provisions of the Act for a given accounting year, arrives at any opinion for exercise of such power it must take into consideration the rival version and material evidence in rebuttal furnished by the class of employees who are likely to be affected by such exercise of power and thereafter if such an opinion is arrived at by the appropriate Government on a comprehensive of the rival versions and then the power is exercised, such an exercise would not become vulnerable on the ground of non-application of mind on relevant facts and subject to the challenge of such exercise on the ground that it was a mala fide or colourable exercise of power or conditions pre-cedent were not satisfied such an exercise of power would not be likely to be found fault with by any competent court before which such an order under Section 36 is brought on the anvil of scrutiny. Therefore, in the aforesaid third category of cases even though the delegate is said to be exercising conditional legislative power it cannot be said to be entrusted by the Legislature with the function of a purely subjective nature based on its sole discretion, nor can it be said to be exercising such power for binding uniformly the whole class of persons without benefiting one class at the cost of the other class of persons who are subjected to the exercise of such exemption power. It must, therefore, be held that in such third category of cases of exercise of power of conditional legislation objective assessment of relevant data furnished by rival classes of persons likely to be affected by such an exercise cannot be said to be ruled out or a taboo to such an exercise of power. It is also necessary to keep in view that in such category of cases the delegate exercising power of conditioner legislation does not lay down a uniform course of conduct to be followed by the entire class of persons coverred by the sweep of such an exercise but lays down a favorable course of conduct for a similar class of persons at the cost of the rival large category of persons covered by the very same exercise of power. To that extent there is a mini lis between these two rival categories of persons likely to be affected by such an exercise by the delegate. Such exercise may also cover existing situations as well as future situations sought to be subjected to the exemption for the period prescribed in the order and may sometimes affect to any permissible extent even past transactions in individual cases. Such type of exercise of power cannot be said to rule out consideration of rival viewpoint on the question of grant of exemption to an

establishment or to a class of establishments from the relevant provisions of the Act. In the case before us the legislation has prescribed objective standards and has permitted the delegate to grant exemption and to withdraw the benefit of the statute which is being enjoyed by the persons and in our opinion, in such a situation, principles of fair play or consultation or natural justice cannot be totally excluded.

21.In this connection we may also refer to a decision of this Court in the case of Visakhapatnam Port Trust and another Vs. Ram Bahadur Thakur Pvt. Ltd. and others [(1997) 4 SCC 582] wherein this Court had to consider the question whether the appropriate Government while modifying or cancelling the rates of wharfare charges framed by the Visakhapatnam Port exercising powers under Section 52 and 54 of the Major Port Trusts Act, 1963 was required to hear the parties likely to be affected by such an exercise. Considering the scheme of Sections 52, 53 and 54 of the said Act it was held that the scale of rates and statement of conditions framed by the Port once sanctioned by the Central Government and published by the Board in the official gazette operate on their own and at this stage parties affected were not to be heard. However, while considering the modification or cancellation of the rates in exercise of powers under Section 54 of the said Act the Central Government could appropriately consider the representations of the parties likely to be affected by such modification. In paragraph 15 of the Report on Point No.4 the following observations were made in this connection:-

> "It is axiomatic that a legislative exercise or exercise by a subordinate legislative agency imposing any tax or fee or charges would not require the affected parties to be heard before such charges or impost are levied. But this argument of Shri Bobde may be relevant at the stage of Section 52 of the Act wherein the scales of rates and statements of conditions framed by the Board are put up for prior Sanction of the Central Government. However, the said situation would not prevail when a grievance is made by the aggrieved parties concerned who submit that the sanctioned scales of rates which are prevalent and operative require modification or cancellation in public interest as they are unreasonable, excessive or wholly or partly lack the back-up of quid pro quo. As and when such grievances are made and are required to be examined by the Central Government in exercise of its statutory powers and functions under Section 54 of the Act, if the Central Government gets convinced that in public interest appropriate modifications or cancellation of rates are required to be made, then it would be the statutory obligation of the Central Government to direct the Board concerned accordingly and it will be equally the duty of the Board to carry out such suggested modifications or cancellations as directed by the Central Government. At that stage if the objections of aggrieved parties are directied to be considered by the Central Government in public interest no fault can be found with such a direction. ...."

The aforesaid decision also supports the case of the respondents that in appropriate cases representation of aggrieved parties can be considered by the statutory authorities for arriving at a just and balanced conclusion on relevant facts.

22.On the aforesaid conclusion of ours we cannot find fault with the decision rendered by the High Court that the impugned exemption notifications issued from time to time by the State of Tamil Nadu under Section 36 of the Act were not legal and valid and they were issued without giving any opportunity whatsoever to the employees of the Housing Board to have their say when they were necessarily adversely affected by the exercise of such power even though it was an exercise of

conditional legislative power. Such an exercise of power did not fall within any of the first two categories of delegated legislations but squarely fell within the third category of such an exercise of power.

23.However still a question remains as to whether the High Court was justified in taking the view that hearing should be given to the affected employees of the establishment before the appropriate Government can exercise its power of exemption under Section 36 qua a given establishment like the Housing Board.

24.Now it if is contended that any personal hearing is to be given to the employees likely to be affected by the exercise of such power either personally or through their accredited representatives like the trade union leader or others then such a contentions cannot be sustained on the nature of the power conferred under Section 36 of the Act on the appropriate Government, otherwise instead of remaining a conditional legislative power it would assume the characteristics of a quasi-judicial power. It must be kept in view that the appropriate Government does not adjudicate upon the rights and obligations of parties nor does it decide any lis between the parties. All that it does while exercising powers under Section 36 of the Act is to form an opinion on the satisfaction of objective facts regarding financial position and other relevant circumstances in connection with the claimant-establishment or class of establishments which would require in public interest and not necessarily purely in the private interest of the claimants that relevant provisions of the Act should not be made applicable to those claimants for a given period of time. Once the bona fide exercise of power under Section 36 is undertaken the logical consquence is that the benefit otherwise flowing from the scheme of the Act may not be available to the class of employees affected thereby, for that limited period during which the exemption continues. All that is required for such an exercise is, therefore, not any personal hearing to be granted to the employees likely to be affected by the said exercise but they must be given at least an opportunity to put forward their rebuttal evidence or material against the material furnished by the claimant-establishment so that the appropriate Government can have an objective assessment of the relevant data with a view to arriving at a rational, well-informed and reasonable opinion on a compreshensive consideration of pros and cons of the facts situations concerned calling for such an exercise of power on its part.

25.In the light of the aforesaid conclusion of ours the question remains as to what procedure should be followed by the appropriate Government in such cases. The following steps can be easily visualised for being followed by the appropriate Government when moved by any establishment or class of establishments for exemption under Section 36 of the Act for the relevant years:

> 1. When such applications are received by the appropriate Government which necessarily have to be support by relevant data by the claimants, the receipt of such applications has to be brought to the notice of the employees likely to be affected by grant of such applications and for that purpose notices can be suitably got affixed by the appropriate Government on the notice boards of the concerns or factory premises of the establishments where the workmen are working mentioning the dates on which such applications are received and the grounds on which such exemptions are claimed under such applications.
>
> 2. Suitable public notice in newspapers having circulation in the area of operation of such establishments can be got published and for that purpose suitable expenses can be required to be reimbursed by the claimants to the appropriate Government.

3. The concerned employees through their representative unions may, under these circumstances, be permitted to file their written representations with relevant data for rebutting the material furnished by the claimants so that the rival version put forward by the employees also will become available to the appropriate Government before it forms its opinion. For that purpose the public notice and the notice to be affixed on the notice boards of the concerns should indicate as to within what reasonable time such representations may be furnished with relevant data representative unions of the employees concerned.

4. Though it is not necessary for the appropriate Government before forming its opinion under Section 36 of the Act on the basis of the data furnished by the rival parties to give any personal hearing either to the claimant-establishment or to the representative union of the employees, it may be still open in appropriate cases for the Government, if so thought fit, to give opportunity of personal hearing to the representatives of the establishments as well as of the employees if any elucidation is required in this connection.

5. For making the aforesaid exercise effective if the concerned employees through their representative unions seek an opportunity to look into the material supplied by the establishments in support of their claims for exemption, inspection of such material can be made available to the unions of employees to enable them to file their representations and to furnish the data in rebuttal for opposing such claims.

6. Strict time schedule can be fixed by the appropriate Government within which the entire exercise can get completed so that the proceedings may not drag on for indefinite number of months. Under the circumstances, therefore, it would always be open to the appropriate Government on receipt of such applications for exemption under Section 36 to fix the time schedule of four to six weeks from the date of publication of such notices about receipt of applications for exemption as aforesaid within which the employees through their representative unions, if so advised, may file their representations and within the same time they may be given an opportunity, if so required, to have inspection of the material furnished by the claimant-establishments in support of their claim applications. Once such time schedule is followed no written representation would ultimately be required to be entertained after the time limit fixed for receipt of such representations from the employees' unions likely to be affected by the grant of such exemption so that within a short time thereafter as expeditiously as possible the appropriate Government can form its opinion, if any, and complete the exercise if it is of the opinion that all the requisite conditions for exercise of the power under Section 36 of the Act have been found to have existed qua the claimant-establishment or class or establishments for an appropriate period for which such exemption is to be granted.

26.The aforesaid procedural steps are illustrative and not exhaustive. But they have to be read in Section 36 of the Act so as to make the Section workable and the exercise of power can be insulated against attack on the ground of irrational exercise of power. We make it clear that only in the third category of cases of conditional legislation in which Section 36 of the Act falls, as discussed by us, the aforesaid procedure is required to be followed. It cannot have any application to the first two categories of cases of exercise of powers of conditional legislation.

27.On the aforesaid conclusion of ours we must hold that the ultimate decision of the High Court on Point No.3 that the impugned exemption notifications issued under Section 36 from year to year by the State of Tamil Nadu were null and void, has to be upheld not on the ground that hearing, personal or otherwise, was not given to the employees but on the ground that the procedure indicated by us hereinabove regarding third category of cases of exercise of powers of conditional legislations was admittedly not followed by the appellant-State while passing the impugned orders of exemption in favour of the Housing Board. The third point for determination is, therefore, answered in the affirmative in the aforesaid terms.

28.Before parting we may mention one submission canvassed by the learned counsel for the Housing Board. He submitted that Section 36 of the Act also entitles the appropriate Government to take into consideration other relevant circumstances for exempting any establishment or class of establishments from the provisions of the Act. That this may involve a policy decision on the part of the Government to give impetus to a class of industries in an area where the industrial development may be less so that new industries in that area can be attracted and their operation costs may be reduced. We fail to appreciate how such type of circumstances are to be kept in view by the appropriate Government while considering the rival versions put forward by existing establishment or class of establishments on the one hand and their employers on the other who are likely to be affected by such exercise of power. It is also to be kept in view that the financial position and other relevant circumstances are not independent of their nexus with the existing claimant-establishment or class of establishments and they do not refer to any future establishment which have yet not seen the light of the day and which have not still employed any employees who could be said to have earned any statutory benefits under the Act till then. Therefore, the other relevant circumstances as mentioned in Section 36 will have to be read with the financial position of the claimant-establishments themselves and their other circumstances have to be seen on the touchstone of public interest to enable the appropriate Government to form its opinion under Section 36 qua the claims of such existing establishments. This submission of learned counsel for the Housing Board, therefore, does not advance the case of the Board any further.

29.In view of our aforesaid decision on all the three points, therefore, these appeals fail and are dismissed. In the facts and circumstances of the case there will be no order as to costs.