

Indian Express Newspapers (P) Ltd. Etc. ... vs Union Of India And Others Etc. Etc on 23 September, 1994

Equivalent citations: AIR 1995 SUPREME COURT 965, 1995 AIR SCW 936, 1995 LAB. I. C. 1419, (1995) 70 FACLR 341, (1995) 1 LBLJ 1132, (1995) 1 SCT 100, (1994) 5 SERVLR 584, 1995 SCC (SUPP) 4 758, (1995) 1 SCJ 446, 1996 SCC (L&S) 243, (1995) 86 FJR 70, (1994) 6 JT 269 (SC)

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Bench: Kuldeep Singh, P.B. Sawant, N.P. Singh

CASE NO.:

Transfer Case (civil) 10 of 1990

PETITIONER:

Indian Express Newspapers (P) Ltd. etc. etc.

RESPONDENT:

Union of India and others etc. etc.

DATE OF JUDGMENT: 23/09/1994

BENCH:

Kuldeep Singh & P.B. Sawant & N.P. Singh

JUDGMENT:

JUDGMENT ORDER P.B. Sawant, J.

1. In all these matters, the petitioner-establishments have challenged two orders viz., Nos. 683(E) and 684(E), both dated 31.8.1989, (hereinafter referred to as 'Orders') issued by the Central Government under Section 11 of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (hereinafter referred to as the 'Act') accepting and giving effect to the recommendations of the Wage Board Report dated 26.5.1989 (hereinafter referred to as the 'Report') on various grounds. Order No. 683(E) deals with wage-scales and grades, and Order No. 684(E) deals with House Rent Allowance and City Compensatory Allowance. The Wage Board was constituted by the respondent 1-Union Government in 1985 under the chairmanship of Shri Bachawat and hence the Report given by it is known as Bachawat Award. Both the orders are challenged on the ground of violation of the fundamental rights under Articles 14, 19(1)(a) and 19(1)(g) of the Constitution of India.

The petitioners also challenge the amendment of Sections 2(d) and 10(4) of the Act brought about by Sections 2(i) and 3 of the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions (Amendment) Act, 1989 (hereinafter referred to as the

"Amending Act") by adding an Explanation at the end of Section 10(4) and a Schedule at the end of the Act as being violative of Articles 14, 19(1)(a) and 19(1)

(g) of the Constitution.

2. In order to appreciate the challenges, it is necessary to state a few background facts.

The Act as it was initially enacted was titled the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (the 'original Act') since it was confined to the service conditions of the working journalists only. By an amendment brought into force on 21.12.1974, by the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions (Amendment) Act, 1974, the scope of the original Act was expanded to include the other newspaper employees. Under the original Act, which was confined to the working journalists only, a Board headed by Shri Divatia was appointed under Section 9 of the Act, and the said Board gave its award in May 1957 which is known as Divatia Award. The recommendations made by the said Board and the provisions of the Act were challenged by some establishments including some of the petitioners herein, under Article 32 of the Constitution, and these challenges were dealt with in the decision of this Court in *Express Newspaper (Pvt.) Ltd. and Anr. v. Union of India and Ors.* : (1961) ILLJ339SC by a Constitution Bench of five learned Judges. To this decision, we may have occasion to refer later. Suffice it to say for the present that certain propositions of law which were laid down by this decision were followed not only by the later Wage Boards appointed under the Act by all industrial adjudicators in the country.

After the Divatia Wage Board, three more wage boards were appointed, viz., Bhandarkar Wage Board, Snide Wage Board and Palekar Wage Board in 1958, 1963 and 1975-76 respectively. They gave their respective awards in 1959, 1967 and 1980. They followed the principles laid down in the aforesaid decision of this Court. Then came the present Wage Board, viz., Bachawat Wage Board and its impugned award.

3. Before we discuss the challenges to the impugned award, it will be necessary to examine the relevant provisions of the Act, the changes brought about in the Act after the decision in *Express Newspaper case* (supra) and the propositions of law laid down in the aforesaid decision.

Section 2(d) defines "newspaper establishment" to mean-

(d) "newspaper establishment" means an establishment under the control of any person or body of persons, whether incorporated or not, for the production or publication of one or more newspapers or for conducting any news agency or syndicate; (and includes newspaper establishments specified as one establishment under the Schedule).

Explanation - For the purposes of this clause, -

(a) different departments, branches and centers of newspaper establishments shall be treated as parts thereof;

(b) a printing press shall be deemed to be a newspaper establishment if the principal business thereof is to print newspaper];

The Schedule referred to above states as follows:

1. For the purposes of Clause (d) of Section 2, (1) two or more newspaper establishments under common control shall be deemed to be one newspaper establishment;
- (2) two or more newspaper establishments owned by an individual and his or her spouse shall be deemed to be one newspaper establishment unless it is shown that such spouse is a sole proprietor or partner or a shareholder of a corporate body on the basis of his or her own individual funds;
- (3) two or more newspaper establishments publishing newspapers bearing the same or similar title and in the same language in any place in India or bearing the same or similar title but in different languages in the same State or Union territory shall be deemed to be one newspaper establishment.
2. For the purposes of paragraph 1(1), two more establishments shall be deemed to be under common control -
 - (a)(i) where the newspaper establishments are owned by a common individual or individuals;
 - (ii) where the newspaper establishments are owned by firms, if such firms have a substantial number of common partners;
 - (iii) where the newspaper establishments are owned by bodies corporate, if one body corporate is a subsidiary of the other body corporate, or both are subsidiaries of a common holding company or a substantial number of their equity shares are owned by the same person or group of persons, whether incorporated or not;
 - (iv) where one establishment is owned by a body corporate and the other is owned by a firm, if a substantial number of partners of the firm together hold a substantial number of equity shares of the body corporate;
 - (v) where one is owned by a body corporate and the other is owned by a firm having bodies corporate as its partners if a substantial number of equity shares of such bodies corporate are owned, directly or indirectly by the same person or group of persons, whether incorporated or not, or
 - (b) where there is functional integrality between concerned newspaper establishments.

The bracketed addition in Section 2(d) and the Schedule referred to therein were inserted by the Amending Act 31 of 1989 which came into force retrospectively on 28th August, 1989. The provisions of Section 2(i) of the said Amending Act in terms state that the said bracketed portion

"shall be deemed always to have been inserted at the end" of the original Section 2(d) of the Act. Section 8 and Section 13B give power to the Central Government to fix rates of wages in respect of working journalists and non-journalist newspaper employees respectively, and to revise from time to time the rates of wages fixed, at such intervals as it may think fit. Section 9 and Section 13C lay down the procedure for fixing or revising the rates of wages in respect of working journalists and non-journalist newspaper employees respectively, and they state that for the purpose, the Central Government shall as and when necessary, constitute a Wage Board. Sub-section (1) of Section 10 read with Section 13D lays down the procedure which the Wage Board is required to follow while fixing or revising the rates of wages. The provision says that the Board shall, by notice published in such manner as it thinks fit, call upon all interested persons to make such representations as they may think fit as respects the rates of wages which may be fixed or revised under this Act. Sub-section (2) of Section 10 states that every such representation shall state the rates of wages, which in the opinion of the person making the representation, would be reasonable, having regard to the capacity of the employer to pay the same or to any other circumstance, whichever may deem relevant to the person making the representation. Sub-section (3) thereof states that the Board shall take into account the representations so made and after examining the materials placed before it, make such recommendations as it thinks fit to the Central Government for the fixation or revision of rates of wages and any such recommendation may specify when, prospectively or retrospectively, it should take effect. Sub-section (4) thereof makes an important provision. It enjoins upon the Board while making the recommendations to the Central Government, to have regard to the cost of living, the prevalent rates of wages for comparable employment, the circumstances relating to the newspaper industry in different regions of the country and to any other circumstances which to the Board may seem relevant. An Explanation was added to the said Sub-section (4) by the same Amending Act of 1989 which has a bearing on one of the challenges made to the impugned Award. It states:

Explanation. - For the removal of doubts, it is hereby declared that nothing in this Sub-section shall prevent the Board from making recommendations for fixation or revision of rates of wages on all India basis.

[Emphasis supplied] Sub-section (1) of Section 12 gives power to the Central Government to make an order in terms of the recommendations made by the Board or subject to such modifications as it thinks fit, being modifications which in the opinion of the Central Government, do not effect important alterations in the character of the recommendations. Sub-section (2) thereof gives power to the Central Government to make such modifications in the recommendations, not being modifications of the nature referred to in Sub-section (1), as it thinks fit, after giving to all persons likely to be affected thereby an opportunity to make representations or to refer the recommendations or any part thereof to the Board, as it thinks fit. Sub-section (3) states that every order made by the Central Government together with the recommendations of the Board shall come into operation on the date of publication or on such date, whether prospective or retrospective, as may be specified in the order. Section 13 read with Section 13D states that on the coming into operation of the order of the Central Government under Section 12, every working journalist and

non-journalist newspaper employee shall be entitled to be paid by his employer wages at the rate which shall in no case be less than the rates of wages specified in the order. Section 13A gives power to the Central Government to fix interim rates of wages after consulting the Wage Board.

4. We may now refer to the propositions of law laid down by this Court in the decision in *Express Newspapers Ltd. case* (supra). They are, among others, as follows -

(1) For the fixation of rates of wages which include within its compass, the fixation of scales of wages also, the capacity of the industry to pay is one of the essential circumstances to be taken into consideration except in cases of bare subsistence or minimum wages where the employer is bound to pay the same irrespective of such capacity. Under the provisions of the Act, it is not only open to, but incumbent upon the Wage Board to consider the capacity of the industry to pay, as an essential circumstance.

(2) The capacity of the industry to pay is to be considered on an industry-

cum-region basis after taking a fair cross section of the industry.

(3) The proper measure of weighing the capacity of the industry to pay should take into account the elasticity of the demand for the product, the possibility of tightening up the organisation so that the industry could pay higher wages without difficulty and the possibility of increase in the efficiency of the lowest paid workers, resulting in increase in production, considered in conjunction with the elasticity of the demand for the product against the ultimate background that the burden of the increased rate should not be such as to drive the employer out of business.

(4) The provisions of the Act as they stood then were not violative of the fundamental rights enshrined in Articles 14, 19(1)(a) and 19(1)(g) of the Constitution which provided for classification. The classification of the newspaper establishments on the basis of the gross revenue earned is not bad.

(5) The grouping of the newspaper establishments into chains or multiple units is justified having regard to the conditions of the newspaper industry in the country. There is nothing in the Act which militates against such grouping. The real difficulty however in the matter of grouping into chains or multiple units arises in connection with the capacity of the industry to pay. If a classification on the basis of gross revenue would be legitimately adopted by the Wage Board, the grouping into chains or multiple units could also be made. There is nothing in the Act to prohibit the treating of several newspaper establishments producing or publishing one or more newspapers, though in different parts of the country, as one newspaper establishment for the purpose of fixing the rates of wages. It would not be illegitimate to expect the same standard of employment and conditions of service in several newspaper establishments under the control of any person or body of persons whether incorporated or not. For an employer to think of employing one set of persons on higher scales of

wages and another set of workers on lower scales of wages would by itself be inequitable, though it would be quite legitimate to expect the difference in scales having regard to the quality of the work required to be done, the conditions of labour in different regions of the country, the standard of living in those regions and other cognate factors. All these conditions would necessarily have to be borne in mind by the Wage Board in arriving at its decision in regard to the wage structure though the relative importance to be attached to one set or the other, may vary in accordance with the conditions in different areas or regions where the newspaper establishments are located.

(6) If the industry is divided into different classes, it may not be necessary to consider the capacity of each individual unit to pay. It would certainly be necessary to consider the capacity of the respective classes to bear the burden imposed on them. A cross section of these respective classes may have to be taken for careful examination and all relevant factors may have to be borne in mind in deciding what burden the class considered as a whole can bear.

5. It is necessary to note some significant amendments which were made to the original Act after the aforesaid decision. The first such amendment, as stated above, was to include within the scope of the Act, the non-journalists newspaper employees. The second amendment was to the definition of "newspaper establishment" in Section 2(d) and as pointed out earlier, it was the addition of the bracketed portion in the said definition and the Schedule. With this amendment, different departments, branches and centers of a newspaper establishment were treated as a part of the same establishment and even a printing press, whose principal business was to print newspaper, was also deemed to be a newspaper establishment. As per the Schedule introduced, (i) two or more newspaper establishments under common control were deemed to be one newspaper establishment; (ii) two or more newspaper establishments publishing newspapers bearing the same or similar title and in the same language in any place in India or bearing the same or similar title, but in different languages in the same State or Union Territory, were also deemed to be one newspaper establishment; and

(iii) two or more establishments owned by an individual and his or her spouse were also deemed to be one newspaper establishment, unless it was shown that such spouse was the sole proprietor or partner or a shareholder in a corporate body on the basis of his or her own individual funds. The third amendment was an addition of Explanation to Section 10(4) [(former Section 9(1)], enabling the Board to make recommendations for fixation or revision of rates of wages on all India basis. It has to be noted that this amendment was made after the publication of the award impugned in the present case.

6. The main contention of the petitioners in the present cases/petitions is that this Court in Express Newspaper case (supra) has accepted the contention that in the absence of the requirement of looking into the capacity of industry on an industry-region basis, the entire Act would be violative of Constitution. Hence the Court had in that case read into the provisions of Section 10(4) [the then Section 9(1)] the requirement of looking into the capacity of the industry to pay on an industry-cum-region basis. The necessity to read the said requirement into Section 10(4) has not been changed by the amendments to Sections 2(d) and 10(4). If it is held that the amendment to Section 2(d) would permit an all India fixation of wages, taking into consideration the gross revenue

of the company or other independent companies which are sought to be clubbed, the provisions of Section 2(d), as amended, would be violative of the petitioners' right under Articles 19(1)(a) and 19(1)(g) of the Constitution inasmuch as such fixing up of wages would bring about the situation as it prevailed under the first Wage Board resulting in ignoring the economic viability of the weaker units of the company rendering it impossible to run the said units. It would also make it impossible for the companies to start new newspapers since they would not be viable and would not be in a position to compete with other publications in the same locality. The grouping of the newspapers into chain or multiple units did not imply that the weaker units in those groups must be treated on par with the stronger units. Any such principle of fixation of wages without taking into consideration the burden that would be imposed upon weaker unit of a particular newspaper establishment would be erroneous. Hence it is contended that the amendment to Section 2(d) would be subject to the provisions of Section 10(4) as it stood and as it stands today. Section 2(d) is only a definition clause and the provisions of Section 10(4) are mandatory. Hence, harmonious construction of the provisions of Section 2(d) and Section 10(4) is necessary. Construed thus, it would enable the Wage Board to fix the wages on all India basis taking into consideration the industry as a whole and at the same time, the capacity of individual unit. That would enable the Wage Board to classify the individual unit first into its proper class and then upgrade it reasonably if it belongs to a multiple or chain group. In this connection, it is pointed out that all the Wage Boards in the past except the Palekar Wage Board which dealt with the question on a different footing, fixed wages on the above basis. The said Wage Boards thus implemented the aforesaid decision of this Court.

It is further pointed out that the present Wage Board itself has recognised this principle and while classifying the newspaper establishments in para 11 of Section II of Part I of Chapter IX of the Report on the basis of the gross revenue into 10 classes, it has made an exception in paragraph 6(2) of the said Section in case of newspaper establishments falling in classes VI to IX by directing that they will not be stepped up by more than two classes as a whole in clubbing of gross revenue as is directed in Sub-para (1) of the said para 6. However, the Board has given no reason why similarly for the establishments falling in classes IA to V, the same consideration should not be shown. On the other hand, the Board without giving any reasons, has chosen to treat every unit of the newspaper establishment falling in the latter classes, viz., classes IA to V as being of the same class to which the establishment itself belongs on the basis of its gross revenue. This has manifestly resulted in the weaker units of the newspaper establishments belonging to the said classes being ranked with the highest in the same class, thus, crippling the weaker units with the heavy unbearable financial burden and forcing them to close. Such classification directly offends the petitioners' rights under Articles 19(1)(a) and 19(1)(g) of the Constitution.

Among the other infirmities which are pointed out in the impugned award, the first is that while classifying the establishments, the benefit of paragraph 12 of Section II of Part I of Chapter IX is not given to them by ascertaining whether their advertisement revenue is less or more than 45 per cent of its gross revenue. If this was done and where it was found that it was less than 45 per cent of the gross revenue, the concerned establishments would have been placed in the class next below that in which they are classified on the basis of their gross revenue. Secondly, the award while calculating the financial capacity, has made no provision even for a reasonable depreciation and to that extent the estimates of the capacity of the establishments to pay are seriously flawed. Thirdly, the award

has not considered the burden of retrospective effect it has given to its recommendations from 1.1.1988. The burden on the establishments from 1.1.1988 to 31.12.1989 is enormous and the Board was duty-bound to calculate the said burden to find out whether the establishments were capable of bearing the same. Lastly, the award has also not taken into consideration the costs of news- print which had in the meanwhile gone up by about 76.6 per cent.

We find much substance in the contention - that the Board has arbitrarily clubbed together the different units of the same establishment and classified all of them with the highest of the class to which its top-most unit belongs so far as classes IA to V are concerned and has not followed in respect of those classes, its own guideline given in the said paragraph 6(2) in respect of the establishments which belong to classes VI to IX. The Wage Board in paragraph 11 of Section II of Part I of Chapter IX of its Report has classified the different newspaper establishments on the basis of their gross revenue as follows:

Class Gross Revenue IA Rs. 100 crores and above I Rs. 50 crores and above but less than Rs. 100 crores II Rs. 20 crores and above but less than Rs. 50 crores III Rs. 10 crores and above but less than Rs. 20 crores IV Rs. 5 crores and above but less than Rs. 10 crores V Rs. 2 crores and above but less than Rs. 5 crores VI Rs. 1 crores and above but less than Rs. 2 crores VII Rs. 50 lakhs and above but less than Rs. 1 crore VIII Rs. 25 lakhs and above but less than Rs. 50 lakhs IX Less than Rs. 25 lakhs In Annexure V of the Report, the Board has catalogued the effect of clubbing the different units of the same establishment at different places on the basis of average gross revenue for the past 3 years. The Annexure itself depicts the inequitable results of the grouping. We may as an illustration refer to the effect of clubbing of the units of some of the petitioner-establishments which are mentioned there. Taking the case of Bennett Coleman & Co. Ltd., it has its units at Bombay, Delhi, Ahmedabad, Calcutta, Patna, Jaipur, Pune, Madras and also printing presses at Madras, Patna, Jaipur and Lucknow and its total gross revenue is Rs. 10,238.72 crores. Its Bombay, Delhi and Ahmedabad units have been classified as IA, although their gross revenue is less Rs. 100 crores, 50 crores and 5 crores respectively and they would properly fall according to the guidelines of the Board in classes I, II and V respectively. Similarly, the units of the company at Calcutta, Patna, Bangalore and Jaipur are classified in categories IV, V, V and V respectively, although on the basis of their gross revenue they would fall in the categories of VI, VII, VII and IX respectively, Coming now to the second establishment, viz., Express Newspapers, they have their two units at Bombay, one at Madurai and another at Hyderabad. The gross revenue of all the units was Rs. 7,918.18 crores.

They are all consigned to class I, although their main unit at Bombay and their unit at Madurai belong to class II and their subsidiary unit at Bombay and their unit at Hyderabad belong to class IV and V respectively. It is not necessary to multiply these instances. According to us, in view of the definition of "newspaper establishment" in Section 2(d) and the Explanation to Section 10(4) of the Act and also in view of the fifth and sixth propositions of law laid down by this Court in Express Newspaper case (supra) as extracted above, the units of an establishment which has branches all

over India, can be clubbed together for the purpose of fixation of wages on all India basis. Since all the units of an establishment are not expected to fare similarly, uniform pay-scales for the employees in all the units can be prescribed taking into consideration the financial capacity of the establishment as a whole. The instances pointed out above are the result of the clubbing of the different units of the same establishment.

However, there is much force in the contention of the petitioners that the principle of fixation of the wages on all India basis has not been applied by the Board with uniform yardstick as is evident from paragraph 6(2) of Section II of Part I of Chapter IX of the Report. Whereas the units of the newspaper establishments falling in any of the classes VI to IX, as detailed above, on the basis of their own gross revenue are, for the fixation of wages not to be stepped up by more than two classes, the units of the newspaper establishments falling in classes IA to V are all to be classified as belonging to the class to which the said establishment belongs on the basis of the gross revenue of all the said units. The result of this discrimination is that for the purposes of fixing the wage-scales, the units of the newspaper establishments belonging to classes VI to IX would not be considered as belonging to the said classes but to the classes which are only two grades above the class to which the said units on the basis of their own revenue properly belong. On the other hand, the units of the establishments belonging to classes IA to V would all be considered as belonging to the class to which the establishment itself belongs. The Board has not given any reason as to why while applying the principle of uniform wage-scales to all units of an establishment on all India basis, it has made the discrimination in question between the newspaper establishments belonging to classes IA to V and those belonging to classes VI to IX. The respondents also could not offer any satisfactory explanation or advance a plausible contention to defend the said discrimination. We are, therefore, of the view that the impugned award to be made legally enforceable will have to be modified by extending the limitation of up gradation upto the maximum of two classes laid down in the said para 6(2) also to the newspaper establishments falling in classes IA to V.

7. As regards the other grounds of attack, we are afraid we see no reason to interfere with the award on the said grounds. In view of the amended definition of the "newspaper establishment" under Section 2(d) which came into operation retrospectively from the inception of the Act and the Explanation added to Section 10(4), and in view further of the fact that in clubbing the units of the establishment together, the Board cannot be said to have acted contrary to the law laid down by this Court in Express Newspaper case (supra), the classification of the newspaper establishments on all India basis for the purpose of fixation of wages is not bad in law. Hence it is not violative of the petitioners' rights under Articles 19(1)

(a) and 19(1)(g) of the Constitution. Financial capacity of an all India newspaper establishment has to be considered on the basis of the gross revenue and the financial capacity of all the units taken together. Hence, it cannot be said that the petitioner-companies as all India newspaper establishments are not viable whatever the financial incapacity of their individual units. After amendment of Section 2(d) retrospectively read with the addition of the Explanation to Section 10(4), the old provisions can no longer be pressed into service to contend against the grouping of the units of the all India establishments, into one class.

8. The other contentions advanced on behalf of the Indian Express Newspapers (P) Ltd. are as follows. Firstly, it is contended that the benefit of the provisions of paragraph 12 of Section II of Part I of Chapter IX is not given to the petitioner-establishment while classifying it. Secondly, while calculating the financial capacity, the award has made no provision even for a reasonable depreciation and to that extent the estimates of the capacity of the establishment to pay the revised wages are seriously flawed. The third contention is that the Board has not considered the burden of retrospective effect it has given to its recommendations from 1.1.1988. Lastly, it is contended that the award has not taken into consideration the cost of newsprint which had in the meanwhile gone up by about 76.6 per cent.

9. More or less similar contentions were raised on behalf of other petitioner-establishments. We have made clear at the very outset that some of these contentions raised disputed questions of facts and Ors. mixed questions of facts and law and hence we will not entertain them. In addition, as far as Indian Express Newspapers (Pvt.) Ltd. is concerned the record shows that the said petitioners had not produced any material before the Board in support of its aforesaid contentions which are for the first time advanced before this Court. In fact, the company had virtually boycotted the proceedings of the Board.

10. In view of what we have held above, we allow all the Writ Petitions and Transfer Cases except T.C.N. 6 of 1990, only to the extent indicated below.

The benefit given in paragraph 6(2) of Section II of Part I of Chapter IX will extend to all classes of the newspaper establishments as categorised in paragraph 11 of the said Report and the units of the newspaper establishments in all the said classes shall not be stepped up by more than two classes over and above the classes to which they belong according to their own gross revenue.

In view of our above conclusion, the award as modified, should be implemented by all the establishments w.e.f. 1.1.1988 and the respondent- employees should be paid wages w.e.f. the said date i.e., 1.1.1988. Where, however, there have been settlements between the management and the employees the payment of wages and of arrears of wages will be governed by the terms of those settlements.

There will be no order as to costs.

In views of the above order by which T.C. No. 5 of 1990 is allowed as above, SLP (C) NO. 16356 of 1990 filed by the same petitioners in this Court, does not survive.

In view of the order passed above in main matters, T.C. No. 6 of 1990 stands disposed of, as above.

In view of our order in the main matters, as above, none of the Interlocutory Applications survives,