

THE GANGMASTERS (APPEALS) REGULATIONS 2006

In the matter of an appeal against a decision made by the Gangmasters
Licensing Authority (Ref 43/E/R)

Temp Force Limited

V

The Gangmasters Licensing Authority

GANGMASTERS LICENSING
AUTHORITY

3 1 JAN 2011

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CHIEF EXECUTIVE'S OFFICE

Appointed Person

Mr Michael Butler

Decision

Upon consideration of the appeal documents lodged by the Appellant and the reply to the appeal and accompanying papers lodged in response, it is the decision of the Appointed Person that the appeal is dismissed.

Background

1. Briefly, Temp Force Limited (the 'Appellant') submitted a telephone application for a Gangmaster's Licence on 9 February 2010. After some delay, details of which are recited below, a signed application form was received and the usual background checks were initiated. As a result of these checks, again, details of which appear below, the Appellant was refused a licence.
2. By a letter dated 18 October 2010, Premier Accountants and Tax Advisors, on behalf of the Appellant, submitted an appeal against the refusal to issue a Gangmasters' Licence.
3. The Gangmasters' Licensing Authority ('GLA') responded to that appeal and both the Appellant and GLA have requested that the appeal be dealt with in the form of a written decision by an Appointed Person without the need for an oral hearing.

The Facts

4. Broadly speaking, the facts in relation to this appeal are either not in dispute or can be readily established from the documentation before me. What does appear to be in dispute is whether Mr Baljinder Bhandal, the Principal Authority of the Appellant, is a fit and proper person to be granted a Gangmasters' Licence pursuant to Licensing Standard 1.1 of the Licensing Standards 2009.
5. The facts which I consider relevant to this appeal are detailed below.

6. The Appellant submitted a telephone application for a Gangmaster's Licence on 9 February 2010. Payment was received on 12 February 2010 and the application process commenced. At this time, the Principal Authority of the Appellant was Mrs Harpreet Kaur Bhandal to whom the licence application form was sent. When by 2 March 2010 the completed application form had not been received, the GLA sent an urgent reminder to Mrs Bhandal advising her that if the completed application form was not received within fifteen working days, the application would be cancelled. Following a telephone call from a female not named on the licence application, a duplicate application form was sent to the Appellant's business address on 8 March 2010.
7. On 17 March 2010, the GLA received a telephone call from the Appellant notifying a change in the Principal Authority. The GLA was advised that Mr Baljinder Singh Bhandal was to be the Principal Authority of the Appellant in place of his wife. A new application form was sent to Mr Bhandal to be signed and returned. Once the application form was received, the usual background checks with other government departments were initiated.
8. These checks showed that Mr Bhandal had an unspent conviction in that on 4 April 2007 he had been convicted of driving with excess alcohol, fined £150 and disqualified from driving for sixteen months. Further, it was revealed that Mr Bhandal had been Company Secretary of United Labour Limited, which had a Gangmaster's Licence and of which Mrs Bhandal was the Principal Authority, and this company had VAT debts of £56,012.00 with a further liability of approximately £20,000.00 in respect of PAYE debts. The licence application form requires such information to be declared by the Principal Authority but Mr Bhandal had made no such declaration.
9. The GLA then notified Mr Bhandal of its intention to carry out an inspection of the Appellant's business on 1 July 2010. That inspection was conducted by two GLA's inspectors, Mr Stephen Gant and Ms Angila Holden. Their report was submitted on 22 July 2010. This report has been produced to me. The report shows that Mr Bhandal was questioned about this undeclared conviction and accepted he had not declared it on his application form. He merely indicated that he had attended the accelerated rehabilitation classes in order to regain his licence as soon as possible. I note Mrs Bhandal was also present during the inspection and participated in the discussion. Mrs Bhandal admitted she was the Principal Authority for United Labour Limited but said that the business was not currently supplying labour as her last contract had expired in July 2009 but she was keen to keep her licence and had renewed it the previous week. She maintained that the business was still a going concern but this statement was inconsistent with the GLA's own enquiries which revealed a proposal to strike off the company from the Companies Register.

10. I also note that Mr Bhandal was asked if he proposed to supply labour to the construction industry and he replied that he did not. This subsequently proved to be a doubtful statement when the GLA obtained documents indicating that the Appellant had acted as a sub-contractor for a construction company in May and June 2010. When advised of his responsibility to register for VAT, Mr Bhandal subsequently forwarded documentation to the GLA to show that he had applied for VAT registration.
11. Other matters are referred to in the report, which need not be considered in further detail here, although I note significant confusion as to Mr Bhandal's actual address. I also note a lack of understanding by Mr Bhandal in relation to his responsibilities to his labour force in respect of such matters as accommodation, transport and health and safety.
12. On 18 August 2010, Mrs Bhandal was authorised to act on behalf of the Principal Authority, Mr Bhandal.
13. The Appellant's application for registration for VAT purposes was refused on 13 September 2010, for failure to comply with HMRC's registration process.
14. By letter dated 23 September 2010, the GLA refused the application for a licence for failure to comply with Licensing Standards 1. 1 and 2.1.
15. As previously mentioned, Premier Accountants and Tax Advisors appealed against that decision by letter dated 18 October 2010. The grounds of appeal were stated to be as follows:-
 - 1 We have reapplied for VAT.
 - 2 Mr Bhandal was company secretary in United Labour Limited, but had no involvement in day to day running of the business.
 - 3 Mr Bhandal had no involvement in VAT and PAYE matters.
16. I have seen the GLA's response to the appeal and will not rehearse its contents in detail here. In relation to Licensing Standard 1.1, the GLA points out that Mr Bhandal was the Company Secretary of United Labour Limited which owes substantial amounts of unpaid VAT and PAYE to HMRC. The GLA does not accept the suggestion that Mr Bhandal merely being the Company Secretary of United Labour Limited had no involvement in VAT and PAYE matters. It points out that as Company Secretary of that company, Mr Bhandal would have had a significant degree of general management responsibility and responsibility for the overall administration of the business and its compliance with legal and regulatory requirements. Accordingly, it rejected the suggestion that Mr Bhandal's position of Company Secretary of United Labour Limited formally excuses him from responsibility for that company's debts.
17. The GLA further submits that, since both Mr and Mrs Bhandal were named on both licences and were both involved in the application for the

Appellant's licence, their two businesses were clearly run on a shared responsibility basis and they were both responsible for the debts of United Labour Limited. The GLA could not accept the suggestion that Mrs Bhandal was responsible for United Labour Limited's tax affairs and Mr Bhandal for the Appellant's.

18. Further, the GLA submits that Mrs Bhandal's continued involvement in the Appellant company renders it unfit to hold a licence. The GLA goes on to argue that, even if Mr Bhandal was considered a fit and proper person, Mrs Bhandal, as an individual authorised to act on Mr Bhandal's behalf, was not fit and proper. The GLA concludes that Mr Bhandal, as Principal Authority of the Appellant, is clearly connected to his wife, who is someone who has been deemed not to be fit and proper in the two years preceding the application decision.
19. In relation to Licensing Standard 2.1, the GLA notes that Mr Bhandal argues that the refusal to grant a licence should be overturned on the basis that, although his first application to be registered for VAT was rejected, he has now submitted a new application. The GLA points out in its response to the appeal that at the time of the refusal, Licensing Standard 2.1 had not been complied with and that this is all that needs to be established.

The Licensing Standards

20. Licensing Standard 1.1 (fit and proper test) provides as follows:-

The licence holder, Principal Authority and any person named or otherwise specified in the licence must at all times act in a fit and proper manner.

- The GLA will assess all relevant factors in considering whether a licence holder acts in a fit and proper manner.
- The factors the GLA will consider include, but are not limited to, whether the Principal Authority, directors or company officers (where the licence holder is a company) and any person named or otherwise specified in the licence has :
 - intentionally obstructed the GLA
 - been convicted of any criminal convictions unspent under the Rehabilitation of Offenders Act 1974 ...
 - been an owner, director or partner, or has been concerned in the ownership or management of a business that has gone into insolvency, liquidation or administration whilst the person has been connected with that organisation
 - not being candid and truthful in all their dealings with any regulatory body and they demonstrate a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards, or

- o been influenced by a third party who the GLA considers not fit and proper.

21. Licensing Standard 2.1 (PAYE, NI and VAT) provides that:

A licence holder that exceeds the VAT threshold must;

- be registered with H M Revenue and Customs, and
- charge and pay the correct amount of VAT in a timely manner.

Conclusions

22. Mr Bhandal, the Principal Authority of the Appellant, failed to complete his application form accurately. He seeks to excuse this on the grounds of his lack of understanding of English and, therefore, the application form. I find this assertion difficult to accept. Referring to the application form itself, at section E.10 the applicant is asked, 'Have you any unspent criminal convictions, or alternative sanctions or penalties or proven offences?' Mr Bhandal has quite clearly replied 'No' to that question. Further, at section A.16, the expected turnover of the Appellant is specified as £1.00. This is clearly as illogical as it is inaccurate and I cannot speculate as to the reason for such a bizarre answer.
23. The question of whether Mr Bhandal is a fit and proper person to hold a licence is, frankly, one that I have little difficulty in determining. Whether Mr Bhandal had difficulty in understanding the questions on the application form or not, he has quite clearly failed to disclose an unspent conviction for driving with excess alcohol. When challenged about this, by the GLA's letter of 11 June 2010, Mr Bhandal responded by fax dated 14 June 2010 to confirm that he had in fact been convicted of driving with excess alcohol but had not admitted this on the application form 'due to lack of English'. I note Mr Bhandal has the benefit of tax advisors who lodged the appeal in this matter and who could reasonably have been able to assist Mr Bhandal in the completion of the form. I note the declaration in section H of the form which, inter alia, states, 'I declare that the information given on this application and any supporting material is correct to the best of my knowledge and belief and that I have not deliberately omitted any necessary material or made an incorrect statement. I understand that if deliberate omissions or incorrect statements have been made, my application may be refused without further consideration ...'.
24. I also note that Mrs Bhandal, as Principal Authority of United Labour Limited, had held a Licence and could have been expected to assist in the completion of the application form.
25. Licensing Standard 1.1 makes clear that the GLA will consider, in determining whether a person is fit and proper to hold a licence, whether that person has 'been an owner, director or partner, or has been concerned in the ownership or management of a business that has gone

into insolvency, liquidation or administration whilst the person has been connected with that organisation'. In this regard, Mr Bhandal's assertion that he was merely Company Secretary of United Labour Limited does not stand up to scrutiny. A Company Secretary is an officer of that company and charged with responsibility for regulatory and administrative compliance. I cannot accept that Mr Bhandal was not involved in or had no knowledge of the significant debts run up by United Labour Limited and its subsequent insolvency. I accept the GLA's submission that, even if Mr Bhandal was uninvolved in the affairs of United Labour Limited, Mrs Bhandal was heavily involved with the running of that company and now purports to be involved in the running of the Appellant. Accordingly, even if Mr Bhandal was a fit and proper person, Mrs Bhandal is certainly not fit and proper to hold a licence. It is my conclusion that Mr and Mrs Bhandal are closely involved with each other's business affairs and that neither of them are fit and proper persons to hold a licence.

26. As far as a Licensing Standard 2.1 is concerned, it is clear that there was a failure to comply with the requirements to be satisfied for registration for VAT purposes and this failure subsisted at the time the decision to refuse the application was made. Compliance after the event is, in my view, still a failure to comply and it is clear that Licensing Standard 2.1 was not complied with by the Appellant.
27. In assessing compliance, the GLA's inspection of an applicant for a licence will test the relevant licensing standards which will result in an overall score. The fail score for inspection is 30 points. The Appellant scored 60 points since both licensing standards which were breached carry a score of 30 points. The Licensing Standards 1.1 and 2.1 are critical. Clearly, those persons who wish to operate as labour providers must show they are both fit and proper to hold such a licence and that they are fully compliant with taxation matters. The Appellant, through its Principal Authority, has clearly failed in relation to these licensing standards and the application was rightly refused.
28. For these reasons my decision is that the appeal is dismissed.

Signed..........
Appointed Person

Date........