

25 MAR 2013

IN THE MATTER OF AN APPEAL PURSUANT
TO REGULATION 6 OF THE GANGMASTERS
(APPEALS) REGULATIONS 2006

CHIEF EXECUTIVES OFFICE
BETWEEN:

EMPLOYMENT TRIBUNALS
RECEIVED ON

21 MAR 2013

MANCHESTER
Appellant

MAHAL UK LTD

-and-

THE GANGMASTERS LICENCING AUTHORITY

Respondent

HELD AT Birmingham ON 19th March 2013

APPOINTED PERSON: K.J.G. TUCKER

Representation:

For the Appellant: Mr Grewal

For the Respondent: Mrs Gilligan, solicitor

DECISION

The appeal by Mahal UK Ltd against the revocation of its licence without immediate effect is dismissed.

REASONS

(References to numbers in square brackets [] are to documents in a bundle of relevant documents provided by the GLA.)

1. I was appointed to consider this appeal pursuant to reg. 3 of the Gangmasters (Appeals) Regulations 2006, (SI 2006 No.662), ("the Gangmasters Appeals Regulations"). This document records the summary reasons pursuant to reg. 22 of the Gangmasters Appeals Regulations.
2. The appeal was determined without an oral hearing. The Appellant confirmed in writing on 24th January 2013 that it consented to the application being determined in this way.
3. Pursuant to the Gangmasters Licensing Regulations 2005 the GLA was given power to determine rules in connection with the licensing of persons acting as gangmasters, in particular the criteria for assessing the fitness of applicants for and holders of a licence. The GLA has published Licensing Standards against which it assesses applications for licences and which it expects licence holders to adhere to [5] because they are a condition of the licence (see in particular page 9 of the Licensing Standards). The GLA has also published a Licensing Policy [7]. That sets out (at paragraph 4) that applicants and licence holders must comply with the Licensing Standards in order to be granted "and to keep a licence". It also states that GLA inspections may be conducted "as part of

the application process or after a licence has been granted". Following an inspection, an inspection report will be prepared and passed to the Licensing Team which will make a decision. Some Licensing Standards are "Critical" and some are "non-Critical". A failure of a non-Critical Standard attracts 8 points and a Critical Standard 30 points. An overall mark over 30 will normally result in an application being refused or a licence being revoked, either with or without immediate effect. The Licensing Standards are not particularly onerous. There is significant guidance available to the public about them and about the licensing process. They seek to ensure that gangmasters adhere to certain basic minimum standards and legal requirements when supplying workers and thereby avoid exploitation of workers in relevant fields.

Relevant background facts

4. The Appellant applied for a GLA licence on 8 July 2009. Following an application inspection on 22nd September 2009, a full licence was granted on 26 October 2009. At that time the Principal Authority ("PA") for the licence was Mr Harpreet Singh (Mr H Singh). An accountant, Mr Chand, was authorised to act on his behalf. The licence was renewed annually but the Appellant company did not trade.
5. On 13 February 2013 the GLA help desk received a telephone call from Mr Chand. He informed the GLA that Mr H Singh would no longer be the PA for the Appellant as his brother, Mr Guljinder Singh (Mr G Singh) would be taking over. [2]. A Change of Principal Authority form was subsequently completed and received by the GLA on 5 March 2012. Some correspondence then passed between the parties and on 28 May 2012 a change of PA Inspection took place on 28 May 2012 at which Mr G Singh was present. Following the inspection an inspection report [5] was sent to the Licensing Team. The Appellant was awarded 68 points [8], having failed two critical and one non-critical Licensing Standard. A decision was made to revoke the licence without immediate effect and that decision was recorded in a letter sent to the Appellant on 24 September 2012 [9]. The Appellant appealed against that decision [10]. In the letter sent with the appeal the Appellant made the following points:-
 - a. Mr G Singh had, by 10th October 2012 resigned as a Director and also withdrawn his PA application.
 - b. Mr G Singh no longer had any contact with the Appellant. Mr H Singh was, at all times the sole PA. Mr G Singh had merely applied for that position.
6. The reasons for the revocation of the licence are set out in the Licence Decision Report [8] and the Decision Letter [9]. In particular:-
 - 6.1 The Appellant failed Licensing Standard 1.1 which is a critical standard and attracted 30 points. It involves an assessment of, amongst other matters, whether a licence holder (the Appellant) is fit and proper This includes consideration of whether the Appellant's PA, directors or company officers (a) been

convicted of unspent convictions and (b) have been an owner or director of a business that has gone into liquidation. It is relevant to this point that Mr G Singh was appointed as a director of Mahal UK Ltd on 2nd March 2012:-

6.1.1 In the change of PA form Mr G. Singh stated that he had no unspent convictions. Routine enquiries made with other Government Departments revealed that that was inaccurate: Mr Singh had an unspent conviction for driving whilst being over the prescribed alcohol limit.

6.1.2 Further, Mr G. Singh was previously a Director of Goldline Express Ltd. That company went into liquidation on 27 January 2012 at which time it owned a debt to HMRC of £111,142.83.

6.2 The Appellant failed to notify the GLA that Mr G Singh had been appointed a director within 20 days of that event contrary to Licensing Standard 1.4. This attracted a further 8 points.

6.3 The Appellant failed critical Licensing Standard 1.2 as Mr G Singh was unable to demonstrate that he had the competency and knowledge to successfully pass the PA competency test. The inspection report clearly sets out the numerous reasons why this was.

7. The decision whether to revoke the GLA licence had to be determined on the basis of the information gathered at the inspection. On the basis of that information I consider that there were more than ample grounds for the GLA to conclude that the Appellant had failed Licensing Standards 1.1 (which attracted 30 points) and Licensing Standard 1.4 (which attracted 8 points). The Appellant has not challenged any of the evidence regarding what occurred during the inspection or what Mr G Singh stated. Consequently the Appellant scored 38 points. Pursuant to its Licensing Policy the GLA was entitled to revoke the licence.

8. However, on the information before me I would not uphold the GLA's reliance upon failure of Critical Licensing Standard 1.2. I accept that there was sufficient evidence for the GLA to conclude that Mr G Singh had failed to demonstrate that he had the required competency and knowledge to pass the PA competency tests. However, there is no evidence that Mr G Singh ever became the PA: he had applied to do so and was then assessed against the Licensing Standards. From the evidence before me it appears that Mr H Singh remained the PA throughout. There is no evidence before me that his fitness and competency was not re-assessed or re-considered. I accept that it was called into question by his proposal that Mr G Singh take over as PA when Mr G Singh was clearly not suitable to do so; further whilst acting as PA there had been a breach of Licensing Standard 1.4. I also accept that there was evidence before the GLA that Mr H Singh did not in fact act as a gangmaster because the Appellant had never traded. However, that had been the position since the date upon which the Licence was granted and had not previously led to intervention by the GLA. I consider that in order to rely on Licensing Standard 1.2 the GLA was required to consider whether Mr H Singh remained

competent, particularly in the light of what had occurred. There is no evidence that it did so save to comment that "effectively there is nobody else within the business to assume the role of PA." This appeared simply to be an assumption based on the fact that Mr H Singh had not traded. However he had never traded whilst the PA. That of itself did not demonstrate breach of Licensing Standard 1.2.

9. However, as set out above at paragraph 7, I consider that the GLA was entitled to revoke the licence. Accordingly I dismiss the appeal.

Signed by Katherine Keeley on 20th March 2013
Appointed Person
20 March 2013
