

~~Case Number: 777/ERV~~**IN THE MATTER OF****THE GANGMASTERS (APPEALS) REGULATIONS 2006****BETWEEN**

Appellant SJS Recruitment (UK) Limited	and	Respondent Gangmasters Licensing Authority
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Appointed Person: Mr R F Ashton

Representation:

For the appellant: Raghiv Ashan
SolicitorFor the respondent: Charlotte Wilson
Gangmasters Licensing Authority**DECISION**

The Gangmasters Licensing Authority was correct in refusing SJS Recruitment (UK) Limited a licence under the Gangmasters (Licensing) Act 2004.

REASONS

Background

- 1 I am the person appointed to deal with this appeal pursuant to regulation 3 of the Gangmasters (Appeals) Regulations 2006.
- 2 On 15 October 2009 the appellant applied to the respondent for a licence under the Gangmasters Licensing Act 2004. The application was submitted by the Principal Authority, Mr Jagroop Singh. The application inspection was carried out by Inspectors Mike Groves and Linda Boyle at the registered business premises for the appellant on 15 February 2010. Following that inspection the decision was taken to refuse the appellant a licence. By its solicitor, on 3 June 2010 the appellant appealed against that decision. The basis of the appeal is that the decision was based on facts which are wrong. The parties have agreed that the matter be determined on the basis of written submissions without there being an oral hearing.
- 3 In determining the appeal I had regard to:-

- 3.1 A bundle of documents prepared by the respondent which included the decision letter of 5 May 2010, the appellant's appeal dated 3 June 2010 and the respondent's response to that appeal dated 21 June 2010 as well as a number of other documents, all of those documents being numbered 1 to 19;
- 3.2 The Additional Submissions on behalf of the appellant dated 28 July 2010; and
- 3.3 The Gangmasters (Licensing) Act 2004 ("the Act"), the Gangmasters (Licensing Authority) Regulations 2005 ("the 2005 Regulations"), the Gangmasters (Licensing Conditions) Regulations 2006 ("the 2006 Regulations"); the Compliance Code of Practice dated July 2006 ("the Code"), the Licensing Standards dated October 2006 ("the 2006 Standards"), the Gangmasters (Licensing Conditions) Rules 2009 ("the 2009 Rules") and the Licensing Standards dated April 2009 ("the 2009 Standards"), the 2006 Standards and the 2009 Standards being together referred to as "the Licensing Standards".

Law & Regulatory Framework

- 4 The purpose of the Act is to protect potentially vulnerable workers from exploitation in agriculture and certain other industries. The Act established the Gangmasters Licensing Authority, section 6(1) providing that a person shall not act as a gangmaster except under authority of a licence. Section 7 provides that the respondent may grant a licence if it thinks fit and that it shall be granted subject to such conditions as the respondent thinks fit. Section 8 provides that the respondent may make such Rules as it thinks fit in connection with the licensing of persons acting as gangmasters. Section 9 provides that the respondent may revoke any licence. Regulation 12 of the 2005 Regulations provides that for the purpose of the exercise of its functions under sections 7, 8 and 9 of the Act and making Rules made under section 8, in determining:
- (a) the criteria for assessing the fitness of an applicant for a licence; and
 - (b) the conditions of a licence and any modifications of those conditions
- the respondent shall have regard to:
- (a) the avoidance of any exploitation of workers as respects their recruitment, use or supply; and
 - (b) compliance with any obligations imposed by or under any enactment insofar as they relate to or affect the conduct of the licence holder.

- 5 The respondent has published Licensing Standards, the version applicable for the purposes of this appeal being the 2009 Standards.
- 6 The Licensing Standards state that the respondent adopts a proportionate approach and is concerned with identifying the more persistent and systemic exploitation of workers rather than concentrating on isolated non-compliances.
- 7 Following receipt of an application and reports from other government departments, an applicant is required to undergo an inspection to assess compliance with the Licensing Standards. The aim of the inspection is to establish, from documents and interviews, if the Principal Authority is a fit and proper person, that they are competent and they can demonstrate an ability to comply with all relevant sections of the Licensing Standards.
- 8 A scoring system determines whether an applicant has passed or failed the inspection. Under the 2009 Standards those designated as "critical" are worth 30 points. All other standards are worth 8 points, except licence standard 1.4 which is worth 16 points. If no issues are identified the licence will be granted. If the inspection score is below 30 Additional Licensing Conditions will be attached to the licence. If the inspection score is 30 or above the licence will be refused.
- 9 Regulation 2 of the 2006 Regulations provides:
 - (1) The overriding objective of these Regulations is to enable the appointed person to deal with appeals justly.
 - (2) Dealing with an appeal justly includes, so far as practicable
 - (a) ensuring that the parties are on an equal footing;
 - (b) dealing with the appeal in ways which are proportionate to the complexity or importance of the issues; and
 - (c) ensuring it is dealt with expeditiously and fairly.
 - (3) The appointed person shall seek to give effect to the overriding objective when he
 - (a) exercises powers given to him by these Regulations; and
 - (b) interprets any provision.
 - (4) The parties shall assist the appointed person to further the overriding objective.

- 10 In the absence of any authority, I accept that the question of whether the appellant was compliant with the Licensing Standards has to be determined as at the date of the inspection and not some later date.

Facts

- 11 Since the matter is to be determined without an oral hearing, I have not had the benefit of hearing the witnesses or of their evidence being tested under cross-examination. I have therefore examined all the submissions and documentary evidence, resolving where necessary any conflicts of evidence on the balance of probabilities.

Findings

- 12 The appellant was incorporated on 13 October 2008 and has an authorised share capital of 1000 Ordinary shares of £1 each. It is a small business having the Principal Authority's home address as its principal place of business. The Principal Authority speaks Punjabi and has a very poor command of the English language. As a result the inspectors were accompanied by an independent interpreter, Mr Habans S Ajeet.
- 13 In the course of the application inspection Mr Singh was asked a number of questions regarding how he intended to run the business in accordance with the Standards. In reply to these questions the Inspectors said that the Principal Authority:
- 13.1 said that 1000 shares had been issued but that he did not know how they had been allocated (in fact only one share has been issued);
 - 13.2 could not explain how the appellant would achieve its estimated turnover of £500,000;
 - 13.3 when asked what system the appellant had in place for payroll said that his accountants would deal with this but was unaware what accounting system would be used;
 - 13.4 produced a contract of employment which provided that wages may be withheld; and
 - 13.5 when asked what transport would be provided said that he would be using his own vehicle for which he produced an out of date insurance certificate.
- 14 Having regard to these answers the Inspectors determined that:
- 14.1 clause 7 of the appellant's contract of employment incorporated a provision that could be interpreted as a threat to withhold wages which is unacceptable under the Standards;

14.2 the Principal Authority had failed to demonstrate an understanding of the business and had no idea how the payroll would operate. He did not know how the 1000 shares had been issued or how the anticipated turnover of £500,000 would be achieved; and

14.3 the Principal Authority had produced an out of date insurance certificate for the vehicle that would be used to transport the workers.

15 As a result the appellant was found to be non-compliant with Licensing Standard 1.2 which is critical and as that resulted in the appellant having a score of 30, its application for the grant of a licence was refused.

16 The appellant's appeal is on the basis that the "facts which are not true" and that there were omissions in the statement of terms and conditions of employment which then appellant had agreed to modify. In particular:

16.1 the statement that 1000 shares had been issued was incorrect because only 1 share had been issued;

16.2 the insurance certificate was valid until 10 December 2010;

16.3 the contract of employment was valid; and

16.4 Ark Aurora accountants had been instructed to deal with payroll.

17 In its response the respondent stated that it was no longer pursuing the point in relation to the insurance of the vehicle and that the appellant's contract of employment was now deemed to be sufficient but submitted that the question whether the appellant was compliant with the Standards has to be determined at the date of the inspection and not at some later date. The respondent indicated though that it would be willing to consider a further application from the appellant without imposing any time limit that may otherwise be applied.

18 In his further submissions on its behalf the appellant's solicitor said that the original contract of employment had not contained a threat to withhold wages as that was only applicable where the worker failed to submit a properly authenticated time sheet; that the issue in relation to how the 1000 shares had been issued was not relevant as only 1 share had been issued; that it was unreasonable to expect the Principal Authority to know what payroll system the accountants would use and that the out of date insurance had been submitted in error. Accordingly the appellant should be issued with a licence or in the alternative allowed to make a new application immediately.

19 I am satisfied that on the date of the inspection:

19.1 the appellant intended to use a contract of employment that contained a threat to withhold wages. That is confirmed by the appellant having agreed to amend the contract to remove that threat although the

amended contract had not been provided by the date the decision letter was sent;

19.2 the Principal Authority produced an out of date insurance certificate; and

19.3 the Principal Authority was unable to demonstrate an understanding of the management of the business.

20 I further accept the respondent's submission that it is at the date of the inspection that the question of compliance with the Standards has to be determined.

21 Accordingly I am satisfied that the respondent acted correctly in refusing the appellant a licence.

22 On the question of whether the Principal Authority is a "fit and proper" person, I express no opinion save to say that it is difficult enough to understand and be compliant with all of the relevant legislation when your first language is English and it must be doubly so when you have little or no understanding of English and are reliant on others to explain matters in relation to which you are ultimately responsible and have to demonstrate both an understanding and compliance.



R F ASHTON
Appointed Person
13 August 2010