



**IN THE KWAZULU-NATAL HIGH COURT, PIETERMARITZBURG
REPUBLIC OF SOUTH AFRICA**

CASE NO. 9522/12

In the matter between:

MAHADEW MADANJITH

Applicant

and

**THE DEPARTMENT OF ECONOMIC DEVELOPMENT
AND TOURISM**

First Respondent

KWAZULU-NATAL LIQUOR BOARD

Second Respondent

JUDGMENT delivered on 09 October 2013

STRETCH AJ:

[1] The applicant herein applied for a liquor licence in terms of section 19 of the Liquor Act 27 of 1989 (the Act) with the second respondent (the Board) who operates under the control of the first respondent.

[2] The Board refused the application and subsequently advised the applicant

he was disqualified from being granted a licence in terms of section 25(1)(b) of the Act.

[3] The applicant seeks an order reviewing and setting aside these findings, and thereafter either remitting the application to the second respondent (the Board) to proceed *de novo* or directing the Board to grant the licence.

[4] In terms of section 131 of the Act this court can only review the Board's decision if it is satisfied –

(a) That the Board exceeded its powers or refused to exercise a power which it was obliged to exercise or exercised a power in an arbitrary or *mala fide* or grossly unreasonable manner; or

(b) Where a member of the Board who was in terms of section 10 of the Act disqualified from sitting on the Board, sat on the Board in the consideration of the matter in respect of which the decision was made.

[5] The applicant relies on the following grounds in support of this application:

(a) That one Ms Bassier not only objected to the licence being granted as a member of the Merewent Community Police Forum but also signed the original minutes of the Board meeting held on 13 January 2011 (where the application was refused for lack of municipal consent) thereby signifying that she was present at the decision making process. The applicant contends that this type of conduct is clearly irregular.

(b) That the objections which were ultimately raised against the granting of the licence should have been heard before the application was refused for the first time.

(c) That the objections raised were out of time which is why Captain Naidoo (being the designated police officer in terms of section 140A of the Act) recommended that the licence ought to be granted.

(d) That the Board's conduct, in refusing the application for want of municipal consent, and in thereafter advising the applicant that his application was also heavily objected to by members of the community, and only then convening an objections hearing (in terms of section 11 of the Act), is grossly irregular.

(e) That the evidence of Naidu and Shaik (who testified at the hearing on behalf of certain objectors) ought not to have been relied on.

(f) That the Chair was clearly biased in favour of the Board and that she had adopted a dual role of presiding officer and prosecutor.

(g) That the information on which the Board had based its finding that the applicant was disqualified to hold a licence in terms of section 25(1)(b) of the Act (namely that the applicant had paid five admission of guilt fines for dealing in liquor without a licence, and a sixth fine after he had attended the objection hearing) was not before the panel at the time when the hearing was held.

[6] I do not, for purposes of this judgment, intend dwelling on the first six grounds raised. In my view, none of these grounds are sufficiently persuasive to make out a case for the setting aside of the Board's decision.

[7] That however, is not the end of the matter.

[8] Mr Naidu, as chair of the Merebank policing forum and the community policing forum and as vice-chair of the Merewent policing forum, testified at the objections hearing convened on 16 May 2012. During his evidence he mentioned that the applicant had already been selling liquor illegally and that he had been charged for this by the police. However, no evidence was presented at the hearing to suggest that the applicant had also paid several admission of guilt fines over the period 2005 to 2011 for selling liquor without a licence in contravention of section 154 of the Act.

[9] The hearing was subsequently adjourned for the Board to deliberate after which a decision would be forwarded to the offices of the applicant's attorneys.

[10] On 11 July 2012 the Chair of the Board advised the applicant in writing that:

(a) The Board had considered all the evidence led at the hearing and "the additional information which was outstanding from the South African Police Service."

(b) The Board had, after the hearing had been adjourned, obtained information from the police to confirm that the applicant had paid no less than five admission of guilt fines (of between R300 and R1000) for selling liquor illegally during the year immediately preceding the hearing, and that he had also been charged with (and had admitted to) this offence during the month after the hearing had been adjourned.

(c) The Board was of the view, regard being had to the applicant's relevant criminal record, that he was in any event disqualified for a licence in terms of section 25 of the Act.

[11] The relevant portions of section 25(1)(b) reads as follows:

“A licence shall not be granted to any person who –

Has in the preceding 10 years been convicted of an offence in terms of this Act, ... irrespective of the sentence imposed, and was within five years after the conviction again convicted of an offence in terms of the said laws, and was then sentenced therefor(e) to a fine of not less than R200 or to imprisonment without the option of a fine, *unless the last-mentioned offence was of such a nature that it does not imply that such a person is unsuitable to hold the licence, or unless any one of the sentences has been set aside by a competent court or such a person has received a grant of amnesty or a free pardon in respect of any one of the sentences or the fine has been remitted* (my emphasis) ...”

[12] The applicant, in his replying affidavit, denied that he had been selling liquor illegally for many years. He avers that his in-laws with whom he was living, were originally the suspects but that the police arrested him and refused to release him unless he paid admission of guilt fines. The police also told him, so he says, that he would not have a police record and that he would be released forthwith. He says that he believed them at the time as he also thought that an acknowledgement of guilt fine was equivalent to a traffic fine, and that he had no idea that it came with a criminal conviction in terms of section 57 of the Criminal Procedure Act 51 of 1977. He also denies that he sold liquor between April 2011 and June 2012 but says that the police repeated the same modus operandi as they had done when his in-laws were the suspects, and because they had promised him that he would not have a criminal record, he simply paid the fines again.

[13] He now says, in these application papers, that he intends launching an urgent application for the setting aside of these “acknowledgement of guilt convictions.”

[14] I deliberately refrain from commenting on his prospects of success in this regard. On the papers before me it is clear that the purpose of the hearing was for the Board to reconsider its previous decision after having heard and considered the objections. That much was said when the hearing was adjourned for a decision.

[15] The Board's letter dated 11 July 2012, purportedly informing the applicant of its decision, is not only vague and capable of more than one interpretation, but takes into account information which the applicant had not been afforded the opportunity to traverse before the decision was made. The letter does not reflect, for example, the Board's findings with respect to the objections and whether it was persuaded (by this additional evidence only) to grant or to refuse the granting of a licence. All the letter purports to do is to make a finding of disqualification in terms of section 25 of the Act, based on information acquired *ex post facto*.

[16] I am satisfied that in conveying its decision to the applicant in the manner in which it did, and basing its decision on information which the applicant was not afforded the opportunity to challenge, the Board declined to exercise a power which it was obliged to exercise; alternatively, that it exercised its power in an arbitrary manner. In my view the applicant's rights in terms of sections 33 and 34 of the Constitution have been substantially prejudiced by the procedure followed, and he is entitled to a reconsideration of his application in terms of section 132 of the Act to this extent only.

[17] The order I make is as follows:

ORDER:

1. Insofar as it is deemed necessary, the decision made by the respondents refusing the applicant's application for a liquor licence is set aside.
2. The respondents' finding that the applicant is disqualified from obtaining a licence is set aside.
3. The matter is remitted for reconsideration subject to the applicant having been afforded the opportunity to challenge the additional information which the respondents obtained from the South African Police Services referred to in the respondents' letter dated 11 July 2012.
4. The respondents are directed to pay the costs of this application jointly and severally, the one paying the other to be absolved.

STRETCH AJ

Appearances /

Appearances:

For the Applicant	:	Mr S. Govender
Instructed by	:	Bajnath and Partners Chatsworth C/o Messenger King DCC Campus Building 21 Timber Street Pietermaritzburg
For the Respondents:	:	Mr M.G. Chetty
Instructed by	:	The State Attorney(Kwazulu-Natal) Durban C/o Cajee Setsubi Incorporated 195 Boshoff Street Pietermaritzburg Ref. Mr Essa
Date of Hearing	:	10 June 2013
Judgment handed down on	:	09 October 2013