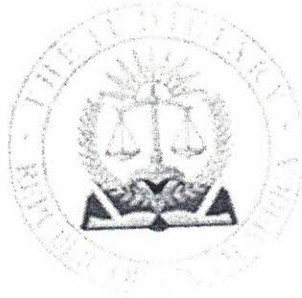


## REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 54390/17

(1) REPORTABLE: YES / ~~NO~~  
 (2) OF INTEREST TO OTHER JUDGES: YES/~~NO~~  
 (3) REVISED.

28/11/2018

DATE

A. Modisa

SIGNATURE

In the matter between:

RATILAL LALA BHIKHA  
 THE CLASSIC INDIA RESTAURANT (PTY) LTD

First Applicant  
 Second Applicant

and

GAUTENG PROVINCIAL LIQUOR BOARD  
 THE CHAIRPERSON OF THE GAUTENG  
 PROVINCIAL LIQUOR BOARD

First respondent  
 second Respondent

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 J U D G M E N T
 

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**MODISA AJ:**

**INTRODUCTION**

- [1] At present, before me, by way of motion proceedings, is an application for judicial review of an administrative action. The review is in terms of the provisions of the Promotion of Administrative Justice Act 03 of 2000 ("PAJA").
- [2] The parties agree that the proceedings were instituted after the lapse of the prescribed time periods prescribed in Section 7(1) PAJA. However, there is a difference of view in relation to when the above period commenced to run.
- [3] The adjudication of the delay objection must be the starting point of these proceedings, **Beweging vir Christelik Volkseie Onderwys and others v Minister of Education and others [2012] 2 All SA 462 (SCA)** at Para 44, is authoritative in that regard.
- [4] The parties' contradictions in that regard are to be resolved by determining the date on which the impugned administrative action was taken, and whether the impugned administration was subject to an internal remedy, such an internal appeal, and if so, whether such remedy

exercised and when was a decision made on the internal appeal, if any.

- [5] An alternative basis of the inquiry is the determination of the date on which the First Applicant was informed of the administrative action or a determination of when did the First Applicant became aware of the administrative action and the reasons of it.
- [6] In the foregoing alternative inquiry the prescripts related to a failure to take a decision constituting an administrative action and the entitlement to request reasons as provided for in Section 5(1) of PAJA finds application.
- [7] When a case is made-out, for the grant of condonation and the time periods are extended, the next stage of inquiry will be to determine whether or not the impugned administrative action is inhibited with characters enunciated in Section 6(2) of PAJA and thus unlawful.
- [8] In the event that unlawfulness is established, the third stage comprises of a determination on just and equitable relief.
- [9] The above parameters are informed by the rules pertaining to the interpretation of statutes, as authoritatively determined in **Bastian Financial Services (Pty) Ltd v General Hendrik Schoeman Primary**

**School 2008 (5) SA 1 (SCA).** There it was stated that:

The primary rule in the construction of statutory provisions is to ascertain the intention of the Legislature. It is now well-established that one seeks to achieve this, in the first instance, by giving the words of the enactment under consideration their ordinary grammatical meaning, unless to do so would lead to an absurdity so glaring that the Legislature could not have contemplated it.

[10] The principle was restated in **Natal Joint Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA)**, as follows:

The process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production.



## **FACTUAL BACKGROUND**

- [11] The facts relevant to the inquiries outlined above are very narrow. It is best that I dispose of them as at the outset. However, there is minor issue that I must deal with before setting out the facts. It relates to the use of the word '*indulgence*' in the request for condonation.
- [12] On a careful analysis the use of the word '*indulgence*' in a request for condonation for non-compliance with the Rules of Court may be appropriate. However in cases where condonation is requested for non-compliance with a statute the word '*indulgence*' does not find application.
- [13] Section 173 of the Constitution grants the Constitutional Court, Supreme Court of Appeal and the High Court of South Africa the inherent power to protect and regulate their own process, and to develop the common law, taking into account the interests of justice.
- [14] Non-compliance with the Rules of Court affects the regulation of a Court's own process. In that case a request for condonation for such non-compliance is a request for the Court's indulgence.
- [15] Where a statute prescribes a process and there is non-compliance with the prescribed process, a Court is bound to look at the statute's own

prescripts as to how to deal with such an eventuality. In this case PAJA directs that a Court should grant condonation where the interests of justice so require.

- [16] The jurisdictional facts imbedded in the statutory framework of Section 9 of PAJA have been authoritatively determined in the South African jurisprudence. As such an inquiry in that regard is mainly to determine whether such jurisdictional facts have been made-out.

**See: *Opposition to Urban Tolling Alliance & Others v The South African National Roads Agency Ltd & Others* [2013 4 All SA 639 (SCA) at Para 24 & 26.**

- [17] On a purpose approach to interpretation, the Rules of Court are intended for, amongst others, the advancement of the primary function of Courts of hearing and/or adjudicating disputes between the parties. PAJA, on the other hand, does not carry the same purpose.
- [18] Its purpose is to give effect to the right to administrative action that is lawful, reasonable and procedurally fair and to the right to written reasons for administrative action as contemplated in Section 33 of the Constitution.

[19] Thus a Court can indulge any party in its processes relating to the hearing and/or adjudicating disputes between the parties. A Court cannot indulge a party in the asserting a right. It decides a dispute related to such a right.

[20] I now turn to the facts:

20.1 The Gauteng Liquor Act 02 of 2003, whose date of commencement was 01 November 2004, herald in terms of Section 143(2) thereof, *inter alia*, the obligation to submit authorizations, permits or licences issued in terms of the Liquor Act 27 of 1989 to the Board for conversion into authorizations, permits or licences in terms of Act 02 of 2003.

20.2 At the relevant time, the First Applicant was a holder of a special liquor licence, issued on 27 November 2003. The attributes of the special liquor licence held by the First Applicant are in dispute between the parties.

20.3 The First Applicant submitted the existing licence for conversion, and a new special liquor licence was issued, on 01 April 2010. The Licences was valid for a period of 12 (Twelve) months and stood to be renewed annually, in terms of Section 98 of Act 2003.

20.4 On subsequent renewal, in February 2014, the Respondent(s) issued the First Applicant with a pub liquor licence valid for the period 2015/2016 instead of the special liquor licence.

20.5 On renewal of the licence issued for the period 2015/2016, the Respondent(s) issued the First Applicant with a special liquor licence 2016/2017, which on subsequent renewal for 2017/2018 was re-issued as a pub liquor licence.

20.6 Notwithstanding the issue of a pub liquor licence for 2017/2018, the First Applicant continued to operate and trade on the contended understanding of the attributes of a special liquor licence.

20.7 On further renewal of the pub liquor licence for 2017/2018, the Respondent(s) returned as pub liquor licence.

[21] Apart from the obvious conversion of a special liquor licence into a pub liquor licence on annual renewal, the parties are in disagreement about whether or not the special liquor licence entitled the First Applicant to trade from 10h00 until 04h00.

[22] The First Applicant pursue, substantively, an order whose effect would



be the restoration of the special liquor licence from the current status of a pub liquor licence. In that regard the correct approach seems to be to impugn the most recent decision to convert special liquor licence into a pub liquor licence.

- [23] Upon successfully impugning the most recent conversion a special liquor licence into a pub liquor licence, as was done in January 2017, the subsequent renewal of the 2017/2018 licence, which returned as pub liquor licence valid for 2018/2019 will collapse as a matter of course.

**See: Corruption Watch NPC and Others v President of the Republic of South Africa and Others; Nxasana v Corruption Watch NPC and Others 2018 (10) BCLR 1179 (CC) at Para 31-35.**

**The administrative action brought for review**

- [24] The decision impugned in these proceedings was taken in January 2017. A review in terms of Section 6(1) of PAJA must have been initiated without unreasonable delay and by no later than 180 days from January 2017.

- [25] The current proceedings were initiated on 07 August 2017. PAJA does

not define its use of the word *day*. The computation of days is also not expressly provided for. As such I am to follow Section 4 of the Interpretation Act 33 of 1957, which prescribes that:

*When any particular number of days is prescribed for the doing of any act, or for any other purpose, the same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day happens to fall on a Sunday or on any public holiday, in which case the time shall be reckoned exclusively of the first day and exclusively also of every such Sunday or public holiday*

[26.] On that approach, it seems clear to me that the review application is brought within the time period prescribed in terms of Section 7(1) of PAJA. Consequently both the request for condonation and opposition thereto are misconceived.

### **Renewal of licences**

[27] An application for a licence and a renewal of the licence is evidently not the same thing. In this regard I am inclined to label an application for a licence as a process afresh and a renewal of the licence as a revisit of an earlier approved process.

[28] On revisiting an earlier approved decision, as authorised by Act 02 of 2003, the basic notions of fairness would demand that a clear statement of a new contemplated decision, materially different to the earlier decision, must be provided to a party to be affected by such a decision along with an invitation to make representations on the contemplated decision.

**See: Joseph & Other v City of Johannesburg & Other 2010 (3) BCLR 212 (CC) at Para 40-42.**

[29] In this case, the Respondent(s) took a decision, materially different to the earlier decision, in a sense that a special liquor licence was converted and returned as pub liquor licence on renewal, without affording the First Applicant an opportunity to make representations. On the foregoing basis alone, I denounce the decision of the Respondent(s) as procedurally unfair, for failure to comply with Section 3 of PAJA.

[30] I therefore find the decision to be unlawful. The decision therefore stands to be reviewed as set-aside in terms of Section 6(2)(c) of PAJA.

### **Remedy**

[31] I am prepared to assume, without more from the parties, that changing

a special liquor licence into a pub liquor licence was informed by cogent considerations. The First Applicant did allege that the Respondent acted in bad faith.

[32] I therefore deem it prudent that the First Applicant should be granted an opportunity to make representations on those cogent considerations before their special liquor licence is to be converted into any other form of licence in terms of Act 03 of 2003.

[33] The First Applicant's representations can only be considered upon the remittal of the renewal application to the Respondent(s).

## **CONCLUSION**

[34] Another issue that remains outstanding, and disputed between the parties, is the conditions attaching to the special liquor licence, related to the trading hours, prior and after conversion in terms of Act 02 2003.

[35] I have not been provided with sufficient material and/or information to enable a decision on that issue. If I were pressed to resolve the issue, I would most probably be inclined towards Rule 6(6) of the Uniform Rules of Court, and make no order thereon.



[36] However, given that I have reviewed and set-aside the decision of the Respondent(s), of January 2017, to return the special liquor licence as pub liquor licence upon the renewal application, and that the remittal of this matter to the Respondent(s) is almost but certain, I deem it prudent that the issue of conditions attaching to the licence, should it be renewed, be dealt with at that forum.

[37] Practical considerations militate against directing the Respondent(s) to reconsider a renewal application for the period 2017/2018. Such a result will be ineffective, in the face of a further renewal for the 2017/2018.

[38] More-so, when regard is had to the interim interdict operative in the intervening period. I am therefore minded to substitute the decision of Respondent(s) in respect of the licence(s) of 2017/2018 and 2018/2019, to reflect the licence for those periods as special liquor licence(s).

[39] I do so without pronouncing on the trading hours attaching to the licence(s), as I have said, I am in no position to pronounce thereon.

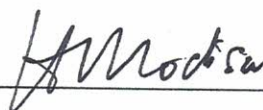
[40] I have been informed that the Second Applicant withdrew its application but did not file a notice of withdrawal. If that is so, I am of the view that the Respondents should invoke the provisions of Rule 41 of the Uniform Rules of Court in order to deal with the question of costs related thereto.

**ORDER**

[41] In the result I make the following order:

1. The decision of the Respondent(s) of January 2017 is reviewed and set-aside.
2. The First Applicant's applications for renewal of licence(s) for the period 2017/2018 and 2018/2019 are declare to be applications for renewal of special liquor licence.
3. The First Applicant is directed to file, in the prescribed form and subject to the prescribed formalities, an application for renewal of the special liquor licence for the period 2019/2020 within 30 days of this Order.
4. Should the Respondent(s) be minded to change the special liquor licence into any other form of licence, the Respondent(s) are directed to accordingly prepare a statement of an intention to do so, make such statement available to the First Applicant, invite and afford the First Applicant an opportunity to make representations.

5. The terms of the interim interdict operative between the parties, and related to the trading hours, shall remain in operation until the Respondent(s) decide on the First Applicant special liquor licence renewal application for the period 2019/2020
6. The First Respondent is to pay the costs of the application.



MODISA AJ

DATE OF HEARING:	27 AUGUST 2018
DATE OF JUDGMENT:	
APPLICANTS' COUNSEL:	ADV L.A. PRETORIUS
APPLICANTS' ATTORNEY:	MARIUS BLOM INCORPORATED
RESPONDENTS' COUNSEL	ADV Z MADLANGA
RESPONDENTS' ATTORNEYS :	STATE ATTORNEY PRETORIA