117/56

G.P.-S.103675—1954-5—1,000. U.D.J. 219.

In the Supreme Court of South Africa
In die Hooggeregshof van Suid-Afrika

(Cape of Good Hope Provincial Division).
(Provinsiale Afdeling).

Appeal in Civil Case.
Appèl in Siviele Saak.

LIQUOR LIC BD: J MCINTAGH & 'n Ander ~~JOHANNES J. NEL~~ Appellant.

versus

Aaron Solomon Tamor Respondent.

Appellant's Attorney / *Prokureur vir Appellant* Hunkin	*Respondent's Attorney* / *Prokureur vir Respondent* Rosenthal
Appellant's Advocate / *Advokaat vir Appellant*	*Respondent's Advocate* / *Advokaat vir Respondent*

Set down for hearing on / *Op die rol geplaas vir verhoor op* Vrydag, 9 Nov., 1956 (9:45 - 5pm)

(APA)

C.A.V.

Appeal dismissed, with costs.

Centlivres, C.J., Schreiner, Reynolds, Hoexter, Steyn (Ag.) } J.J.A.

Hoexter
Hoexter. 19/11/56.

Record

IN THE SUPREME COURT OF SOUTH AFRICA.

(APPELLATE DIVISION)

In the matter between :

MONTAGU LIQUOR LICENSING BOARD & OTHERS Appellants

&

AARON IDELSON & ANOTHER Respondents

CORAM :: Centlivres C.J., Schreiner, Reynolds, Beyers JJ.A. et Hall A.J.A.

Heard : 9th November 1956. Delivered : 19-11-56

JUDGMENT

CENTLIVRES C.J. :- The respondents applied to the appellant Board at its annual meeting held on December 7th, 1955, for the renewal of certain liquor licences held by them. The first respondent applied for the renewal of an hotel liquor licence with off-sale privileges in respect of the Montagu Hotel and for an hotel liquor licence without off-sale privileges in respect of the Montagu Baths Hotel, both of which licences had been in existence for many years. The second respondent applied for a renewal of a wine and malt licence which had also been in existence for many years. Objections were lodged against the applications for the renewal of each licence. One of the objections was that the applications were not properly before the Board in that they did not comply with the

provisions of Sec. 31 (2)(d) of Act 30 of 1928 as they did not contain a description of the premises at which the licensed business was to be conducted.

The second appellant applied at the same meeting of the Board for a new bottle liquor licence. Objections were lodged against this application by the respondents, one of which was that in view of the provisions of Sec. 63(1) of the Act it was not competent for the Board to grant the application, the quota prescribed by that section having already been filled. It is common cause that if the Board had, at its annual meeting, granted all the renewals which were applied for, it would not have been competent for it to grant the application for a new bottle liquor licence.

At the commencement of the Annual meeting the Chairman of the Board suggested that the objection to the respondents' applications for a renewal of their licences on the ground of non-compliance with Sec. 31(2)(d) be considered first. This was done and the Chairman ruled that the respondents' three applications were not in order in that they contained no description of the premises in respect of which the applications for renewals were made. The Chairman also announced that his ruling applied to all the applicat-

ions for renewals before the Board, including five others in respect of which no objection had been taken. As a result of these rulings there were no applications for renewals before the Board, the only remaining application being that of the second appellant for a new bottle liquor licence.

The minutes of the meeting disclose that immediately after the Chairman gave his ruling Attorney Sandler, who appeared for the second respondent, requested that the meeting should be adjourned until about the middle of January 1956. He submitted that that was the correct thing to do in the circumstances of the case, seeing that the position that had arisen was due to a highly technical fault. He added that his client could naturally ask for a special meeting of the Board in terms of Sec. 22(1)(b) of the Act and that it would be unfair to consider the application for a new bottle liquor licence at that stage. Attorney Hofmeyr, who appeared for the first respondent, associated himself with the remarks of Attorney Sandler and pointed out that if the applications for renewals had been granted, it would have been incompetent for the Board to consider the application for a new bottle liquor licence.

The Board refused to grant an adjournment of the meet-

ing and immediately proceeded to consider the application for a new bottle liquor licence. After hearing evidence and objections the Board granted the application for a new liquor licence.

At a special meeting of the Board on December 31st, 1955, all the applications for renewal of the licences were granted.

The respondents applied to the Cape Provincial Division for an order reviewing the proceedings of the Board held on December 7th, 1955, and setting aside the grant of a bottle liquor licence to the second appellant. The third appellant, the Hotel Avalon (Montagu) Beperk, was joined as a respondent in that Division because it held an option to purchase second appellant's bottle liquor licence. The respondents alleged in their petition that the Board's action in refusing the adjournment applied for by them and in thereafter proceeding to consider and grant the second appellant's application for a new bottle liquor licence was grossly unreasonable and/or arbitrary and that in any event the Board's action in granting the second appellant's application was grossly unreasonable and/or arbitrary. The Provincial Division granted the order asked for. Hence the present appeal.

We are not concerned in this appeal with the question whether the Chairman of the Board was correct in ruling that the applications for renewal were not properly before it. That ruling was not attacked in the proceedings before the Provincial Division nor was it attacked before us.

Under Sec. 24(1) of the Act all applications for the renewal of licences must be heard and disposed of before applications for the grant of new licences are considered. One of the reasons for this requirement is to be found in Sec. 63(1) of the Act, the relevant portion of which is as follows:-

" A licensing board shall not grant within the area of an urban local authority any application for a new bottle liquor licence, a new restaurant liquor licence, a new hotel liquor licence, a new club liquor licence or a new wine and malt liquor licence if by such grant the total number of such licences together with bar licences within the area of the urban local authority would -

(i) where the number of parliamentary voters registered within the area does not exceed five thousand, be more than one for every two hundred such voters. "

It is common cause that Montagu is an urban local authority and that the number of parliamentary voters registered within its area as at the date of the annual meeting of the Board in 1955 was 512. If the applications for renewals had

been heard and granted Sec. 63(1) of the Act would have precluded the Board from granting second appellant's application for a new bottle liquor licence. I agree with the following observations made by the Provincial Division :-

" In view of the fact that there were as at the date of the Board's meeting three existing Hotel Liquor Licences and one Wine and Malt Liquor Licence in the urban area of Montagu, i.e. two licences over the quota, the Board would not have been entitled to grant a bottle Liquor Licence unless it had refused to renew three of the existing four licences above referred to. All four of these licencees had applied to the Board for a renewal of their licences for 1956. After the Chairman had ruled that these applications were, owing to their non-compliance with the terms of Section 31(2)(d) of the Liquor Act, not properly before the Board, members of the latter body could not reasonably have thought that these licencees would not take steps to have their applications put in order and pursue their intention to apply for the renewal of such licences for the year 1956. "

I agree also with the view expressed by the Provincial Division that it was competent for the Board to adjourn its annual meeting even to the following year. If it had done that the membership of the Board would, in terms of Sec. 17(1), have remained the same. But Mr. Rathouse, who appeared for the third appellant, contended that the Board, being a body created by statute, had no power to adjourn a meeting other than a power to do so given to it by the statute creating it.

Counsel quoted no authority, and I know of none, for such a wide proposition. It seems to me that when the Legislature directs that a statutory body should hold its annual meeting on a specified day it would be absurd to hold that that body should dispose of its entire agenda at one sitting without any adjournment. The Legislature could not have intended that no matter how heavy the agenda at an annual meeting is that agenda must be disposed of at one sitting of the Board lasting continuously without any break. The mere fact that there are sections in the Act, some of which compel the Board to adjourn and some of which empower the Board to adjourn in certain circumstances does not, in my opinion, mean that it is not competent for the Board to adjourn in circumstances not specifically provided for in the Act.

Mr. Rathouse contended in the alternative that if the Board has a general power to adjourn its annual meeting, it is a power which should be sparingly exercised, as the Act contemplates that the agenda of that meeting should be expeditiously disposed of. As the Board meets annually in terms of Sec. 20 on the first Wednesday in December of each year for the purpose of disposing of applications for liquor licences for the ensuing year starting on January 1st

(sec. 9) it is clear that it should dispose of its business expeditiously but it does not follow from this that in the circumstances of the present case the Board should not have granted the adjournment asked for by the respondents at its annual meeting.

It is clear from the minutes of the annual Meeting that, when the request for an adjournment was made, the Board was told that the respondents would take steps to renew their licences. It must have been aware that the police report furnished in terms of Sec. 136 of the Act was completely favourable to the respondents and that it was practically beyond the bounds of possibility that respondents' applications for renewals would not eventually be granted. The Board's attention was also specifically drawn to the fact that it would have been incompetent to grant the application for a new bottle liquor licence if it had first disposed of the applications for renewals and granted those applications. All this goes to show that the refusal to adjourn the meeting was, to put it at its minimum, unreasonable.

An ingenious argument was advanced by Mr. Rathouse in an attempt to show that the Board's procedure was not unreasonable. He contended that the policy contained in Sec. 63(1) was not an overriding policy to be applied at all

times and he mentioned cases where ~~it~~ the quota granted prescribed by that section might be exceeded. The Board might refuse to grant an application for renewal on the ground that the applic~~ation~~ant was convicted of some offence and that refusal might leave the way open to grant an application for a new licence which the Board in fact grants. The conviction might thereafter be set aside on appeal or review or a free pardon might have been granted and the person concerned might then obtain a licence by invoking the procedure prescribed by Sec. 29(1)(b) of the Act. In such a case the quota prescribed by Sec. 63 ~~would~~ might be exceeded. This would also happen if recourse were had to the procedure prescribed by Sec. 52. No doubt there are these cases where such an anomaly may arise but they do not justify a Board in ignoring the clear prohibition contained in Sec. 63 when it is possible without undue delay to ensure that the provisions of that section will be complied with.

It was also ~~xxxx~~ contended that the Board was justified for other reasons in its refusal to grant an adjournment. It acted, it was urged, in what it conceived to be the public interest in refusing an adjournment and in granting the second appellant a new bottle liquor licence. It is difficult to

appreciate the relevancy of this contention. The fact that a Board may consider that in the public interest there should be, say, four licensed premises in a local urban authority area when the Legislature has said that there should only be three, does not provide a justification for adopting a procedure which technically may be said to enable the Board to flaunt the policy laid down by the Legislature.

I have no doubt in my mind that the refusal of the Board to grant an adjournment was in the circumstances of this case unreasonable but the more difficult question remains whether its refusal was grossly unreasonable. To use the language of Watermeyer C.J. in Vanderbijl Park Health Committee v Wilson (1950 (1) S.A. 447 at pp. 460/461) the answer to this question requires the pronouncement of a value-judgment based upon the principles to be extracted from the Act, applied to the facts of the case. The connotation of the word "value-judgment" is to be found in the following remarks of the learned Chief Justice on p. 460 :-

" Obviously in expressing an opinion upon the questions whether a decision of the Board is 'grossly unreasonable' or not the Court is pronouncing a value-judgment which must necessarily be an expression of its own opinion upon the point whether the unreasonableness of the

"decision is of such a character that it can be called 'gross', and the soundness of that opinion does not admit of being tested or measured by any exact standards. "

I am in complete agreement with the reasons given by van Winsen J. in the Court a quo for arriving at the conclusion that the Board acted grossly unreasonably. He said :-

" In my judgment when the actions of the Board have directly created a situation in which the Board has made it impossible for itself to comply with the express provisions of the Liquor Act in regard to the order in which the Board is to deal with the business before it and to entertain due regard to the limitation prescribed by Section 63(1) relative to the granting of a new Bottle Liquor Licence, then such action can justifiably be described as grossly unreasonable. "

Mr. Rathouse also contended that respondents as applicants for the renewal of their licences had no locus standi to bring review proceedings under Sec. 29 of the Act to set aside the grant of a new bottle liquor licence to the second appellant , because as applicants for a renewal the respondents did not have an interest in the proceedings in which the grant of a new licence was sought, such proceedings being entirely distinct from proceedings for renewals of licences. In Barnes v Port Elizabeth Licensing Board (1948

(1) S.A. 149), which Mr. Rathouse relied on, it was decided that, in view of the provisions of Sec. 24 of the Act, an application for a new licence is not part of the same proceedings as applications for the renewal of licences and that an applicant for a conditional authority under Sec. 32 had, as such, no locus standi to review, under Sec. 29, the proceedings of a Board in respect of the grant by it of a renewal of a licence to somebody else. The position in the present case is different. Here the respondents as holders of existing liquor licences were entitled to contend that their applications for renewal were in order and that if the Chairman of the Board ruled as a matter of law that their applications did not comply with the provisions of Sec. 31(2)(d) of Act 30 of 1928 they had, in my opinion, locus standi to apply for an adjournment of the meeting in order to enable themselves to place before the Board proper applications for renewal. It therefore seems to me that they were applicants within the meaning of Sec. 29. They sought to attack the proceedings of the Board which related to applications for renewal of licences. The refusal of the Board to adjourn was part of those proceedings and the necessary result of holding that that refusal was grossly unreasonable

entitles the Court in the circumstances of this case to rule that the proceedings subsequent to the refusal to adjourn were a nullity : and if such subsequent proceedings were a nullity it follows that the Court should set aside the grant to the second appellant of a new bottle liquor licence. The respondents had, moreover, lodged an objection to the granting of a new bottle liquor licence and as objectors they had locus standi under Sec. 29 to review the proceedings subsequent to the refusal to adjourn on the ground that such proceedings should not have taken place.

It was finally contended on behalf of the appellants that the respondents had failed to prove that the refusal of the Board to adjourn the meeting caused or was calculated to cause substantial prejudice to them within the meaning of Sec. 29(2)(b). In my opinion the refusal to adjourn was calculated to cause substantial prejudice to the respondents because as a consequence of that refusal a new bottle liquor licence was granted, the holder of which would naturally compete with the respondents.

In my opinion the appeal should be dismissed with costs.

Schreiner JA
Rumpff JA
Rogers JA
Hall AJA } concur