IT-TRIBUNAL TAL-BINI U L-KOSTRUZZJONI

Illum it-23 t' Ottubru, 2024

Rikors numru: BCT/43/2024

Membri:

Avukat Philip M. Magri LL.D. M.A. (Fin. Serv.) M.Phil.

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Gilbert Bugeja

vs

Awtorita' tal-Bini u l-Kostruzzjoni

It-Tribunal,

Ra r-rikors tal-appell ta' Gilbert Bugeja fejn giet ikkontestata d-decizjoni tal-Awtorita` intimata datata 16 ta' Lulju, 2024 li permezz taghha l-istess Awtorita` imponiet penali amministrattiva fl-ammont ta' hames mitt euro (€500) in vista ta' ksur tal-Legislazzjoni Sussidjarja 623.08 tramite hrug mis-sit jew rimi ta' zebgha, zjut, materjal iehor, skart fis-siti pubblici. Permezz ta' tali appell jitressqu s-segwenti aggravji:

i. *Solid steel tray is being placed under concrete bucket during concrete casting to prevent concrete spillage.*
ii. *Concrete bucket is being cleaned withn the site and not outside.*

iii. *Site vicinity is being kept clean and is swept on a daily basis.*

iv. *No paint, oil, waste material, rubbish, from the site in caption has been discarded in public spaces. Construction debris is used within the site itself, otherwise loaded onto vehicles (after which ny fallen debris is cleaned).*

v. *Occasionally construction personnel find rubbish bags/some debris (next to the site boundary wall) which could not have originated from the site, but from an unknown source (someone else would have discarded waste next to the site in caption).*

vi. *Due to location of tower crane base (it being on a slope) – dust within the vicinities carried by the wind is collected in front of the tower crane base – dust which would have no originated from the site.*

vii. *Hoarding is solid and of adequate height to ensure that no waste can pass through the site into public road.*

viii. *Photos (...) sent by Shanika Haidon on 15.07.2024 indicate minor dust which may have originated from other sources, however was swept and street was washed by site personnel on 15.07.2024 and 16.07.2024 (as per attached photos).*

ix. *Vehicle oil shown in image (...) could have originated from any vehicle parked on the street and not from the site.*

Ra r-risposta tal-Awtorita' appellata li permezz tagħha wieġbet u eċċepiet is-segwenti:

1. *Illi l-Awtorità appellata qegħda umilment tissottometti li kwalunkwe deċiżjoni meħuda kienet in konformita' ma' dak rikjest mil-liġi, u kwindi korretta f'kull aspett;*

2. *Illi hekk kif jidher car mill-annessi ritratti, komplessivament immarkati bhala Dok A,car li kien hemm materjal li kien parti mis-sit li ma kienx mahsul u mnehhi b'mod adegwat, liema attira l-penali odjerna* (sic)

3. *Ghaldaqstant fuq dak suindikat, l-Awtorita` appellata qiegheda umilment titlob lil dan l-Onor. Tribunal sabiex jichad l-appell odjern.*

4. *Salv eccezzjonijiet ulterjuri.*

Ra l-atti u d-dokumenti kollha inkluz ir-replika tal-appellanti;

Sema' x-xhieda ta' Gilbert Bugeja waqt is-seduta tal-24 ta' Settembru, 2024.

Sema' x-xhieda ta' Shanika Hili waqt is-seduta tat-3 t'Ottubru, 2024.

Ra d-dokumenti ezebiti u d-deposizzjonijiet tax-xhieda kollha li tressqu quddiem it-Tribunal.

Ra li l-partijiet iddikjaraw l-istadju tal-provi tagħhom magħluqa waqt is-sedua tat-3 t'Ottubru, 2024.

Ra wkoll l-kawza thalliet ghas-sentenza ghal-lum.

Ikkunsidra

Jirrizulta li l-Awtorita` qed takkuza lill-appellant bi "*Hrug mis-sit jew rimi ta' zebgh, zjut, materjaliehor, skart fis-siti pubblici*" bi ksur tal-Legislazzjoni Sussidjarja 623.08.

A sostenn ta' tali akkuza xehdet Shanika Hili, ufficjal fi hdan l-istess Awtorita` li f'tali rigward ikkonfermat:

> *Daħlilna rapport fid-9 ta' Lulju 2024 li kien jirreferi għal siment illi skond dan ir-rapport kien qed jinżel fl-ilma fis-sit. Jiena mort fuq is-sit u ngħid illi t-triq kienet tidher li ġiet maħsula imma stajt ninnota li kien hemm xi siment li veru laħaq niżel fil-baħar.*
> *Fuq mistoqsija tat-Tribunal dwar kif nista' nindika illi s-siment kien laħaq niżel fil-baħar, nagħmel referenza għar-ritratti annessi mar-Risposta tal-Awtorita' li huma ħamsa, Nikkonferma li dawn ħadthom jiena. Jiena nikkontendi li minn dawn ir-ritratti jidher illi t-triq kienet ġiet maħsula imma jidhru traċċi ta' siment illi jwasslu għall-isprall. Ngħid illi dan l-isprall iwassal għal ħdejn il-baħar.*
> *Nikkjarifika li jien aċċedejt fuq is-sit darbtejn u ċioe fl-10 ta' Lulju u wkoll fil-11 ta' Lulju u huwa għalhekk illi dawn id-dati jinsabu indikati fuq ir-ritratti annessi mar-risposta.*
> (…)

Skond l-istharrig li ghamilt jiena, nista' nikkonferma li dan is-siment kien hiereg mis-sit mertu tal-PA/5289/19.
Nghid illi on the 10th mort fuq is-sit imma xoghol ma kienx qed isir. On the 11thm meta ergajt mort fuq is-sit kellimt il-haddiem li sibt u dan infurmani l kien hasel il-bajla u mbaghad hasel it-triq ukoll.

Gew prezentati wkoll sett ta' ritratti li jindikaw tracci ta' konkos niexef fit-triq hdejn l-isprall imsemmi. Giet prezentata wkoll pjanta u aerial view li juru s-sit li fih kienu qed isiru x-xogholijiet u l-posizzjoni tal-isprall li jservi bhala drain ghall-ilma tax-xita.

Illi l-appellant pruva jikkontendi li l-hmieg kien gej jew seta' kien gej minn siti ohrajn u li huwa jzomm fis-sehh il-kawteli kollha ta' tindif ghaz-zamma ta' ndafa fl-apparat uzat u wkoll barra mis-sit. Madanakollu huwa car li r-rimi li l-Awtorita` qed tirreferi ghalih huwa proprju dak l-ilma mahmug li jidher li kien qed jirrizulta mill-hasil tal-bajla u l-apparat tax-xoghol da parti tal-appellanti u li jinsab pruvat mill-istess appellanti anke tramite ritratti ezebiti minnu u wkoll mir-replika tieghu ghar-risposta tal-Awtorita`. Waqt is-seduta tal-24 ta' Settembru, 2024, l-istess appellanti, fil-fatt ikkonferma li "*kellna problema bit-tindif peress illi ma stajniex nitfghu l-ilma minhabba* (sic) *u dana in vista ta' spralli li jaghtu direttament ghal gol-bahar u kull darba li nahslu t-triq, l-ilma mahmug jispicca fil-bahar bi problemi li kien qed ikollna mal-ERA*". Fir-replika tieghu jissottometti wkoll li "*The streets abutting the site cannot be cleaned thoroughly with water due to storm-water culvert discharging directly into the sea.*"

Illi ghat-Tribunal huwa car li waqt it-tindif tal-apparat tieghu l-appellanti kien qed ihalli l-ilma joskula skont il-pendlu naturali tat-triq proprju lejn l-isprall li jwassal ghall-bahar kif riskontrat mill-ufficjal u kif jirrizulta wkoll pruvat mir-ritratti ezebiti sahansitra mill-appellanti stess. Is-sors ta' tali ilma mahmug mhuwiex wiehed 'mhux maghruf' jew b'xi sors minghand terzi, kif l-appellanti jikkontendi permezz tal-appell tieghu, imma derivat proprju mill-istess appellanti li allura kellu l-possibilita` shiha li jikkontrolla tali skular billi juza l-ilqugh necessarju u jigbor l-ilma mahmug qabel dan jinzel fit-triq u jinzel fl-isprall ghall-bahar. Huwa car mir-ritratti ezebiti u wkoll mix-xhieda tar-rapprezentanti tal-Awtorita` li dan ma sarx bil-konsegwenza allura li l-Awtorita` kienet gustifikata fid-decizjoni taghha.

Decide

Għaldaqstant it-Tribunal, in vista tar-raġunijiet imsemmija hawn fuq, qiegħed jichad l-appell u kwindi jikkonferma d-decizjoni datata 16 ta' Lulju, 2024.

Dr Philip M. Magri	**Perit Robert Sersero**	**Ing. Anthony Camilleri**
Chairperson	Membru	Membru