IT-TRIBUNAL TAL-BINI U L-KOSTRUZZJONI

Illum 23 ta' Ottubru, 2024

Rikors numru: BCT/49/2024

Membri:

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

Perit Robert Sersero BE&A(Hons), A&CE

Ing. Anthony Camilleri B.Mech.Eng (Hons), FVCM (Hons) L. (Mus.) V.C.M. (Hons.), A. (Mus.) L.S.M.

Nicholas Farrugia

vs

Awtorita' tal-Bini u l-Kostruzzjoni

It-Tribunal,

Ra l-appell li sar permezz ta' *email* datata 26 t'Awwissu, 2024 l-appellanti ikkontesta d-decizjoni tal-Awtorita` intimata datata 23 t'Awwissu, 2024 li permezz taghha l-istess Awtorita` imponiet penali amministrattiva fl-ammont ta' elf euro (€1000) peress illi, skont l-istess Awtorita`, fit-22 t'Awwissu, 2024 kif ukoll fil-granet u fix-xhur ta' qabel, saru xogholijiet ta' demolizzjoni li mhux konformi mal-Legislazzjoni Sussidjarja 623.06, senjatament minhabba li nqast mir-responsabilitajiet tieghek ghall-implementazzjoni tal-Mizuri tad-dikjarazzjoni tal-metodu.

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, skont l-investigazzjoni u l-access li sar mill-ispetturi tal-Awtorita`, x-xoghol ta' demolizzjoni li kien qieghed isehh ma kienx skont dak prestabbilit fid-dikjarazzjoni tal-metodu (liema ritratti qeghdin jkunu annessi u mmarkati bhala Dok A), senjatament skont dak indikat f'punt 6 fuq pagna 5 (Dikjarazzjoni tal-metodu anness bhala Dok B).*

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;

Sema' x-xhieda tal-appellanti Nicholas Farrugia u tal-Perit Matthew Casha waqt is-seduta tal-24 ta' Settembru, 2024.

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

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

Ra l-verbali tal-istess seduta datata 3 t' Ottubru, 2024 fejn, fl-istess seduta gie dikjarat li l-partijiet m'ghandhomx aktar provi x'jipproducu u l-appell thalla ghas-sentenza ghal-lum.

Ra wkoll li dan l-appell qed timxi kontestwalment mal-appell 50/2024

Ikkunsidra

Illi permezz tad-decizjoni taghha datata 23 t'Awwissu, 2024, l-Awtorita` tikkontendi li l-applikant naqas billi fit-22 t'Awwissu, 2024 kif ukoll fil-granet u fix-xhur ta' qabel, saru

xogholijiet ta' demolizzjoni li mhux konformi mal-Legislazzjoni Sussidjarja 623.06, senjatament minhabba li nqast mir-responsabilitajiet tieghek ghall-implementazzjoni tal-mizuri tad-dikjarazzjoni tal-metodu.

A sostenn ta' dan xehed Jake Caruana li huwa ufficjal fi hdan l-Awtorita` appellata li fisser kif l-penali u l-istop notice inhargu fit-22 t'Awwissu, 2024 "*This stop notice was issued in view of the absence of any hoarding and this contrary to what had been issued in the method statement.*" L-istess xhud ifisser illi sussegwentement l-appellanti jidher li rretifika n-nuqqas: "*I can state that I acceded onsite with Perit Casha and I noted that the site had been rendered as per the method statement and therefore action had been taken. I can confirm that the penalties were subsequently issued on the 22nd August because according to the method statements,* ***jacks were needed on site.***" (enfazi mizjuda)

Il-*method statement* relattiv ukoll gie ezebit fejn, fir-rigward tal-uzu tal-*jacks* li skont l-Awtorita` kellhom ikunu prezenti fuq is-sit, punt 6 ta' pagna 5 citat fir-risposta tal-Awtorita` jipprovdi testwalment:

> *6 Supports and scaffolding will be installed* ***where deemed necessary*** *in order to work safely and avoid materials from falling any unnecessary heights.* ***If necessary****, this scaffold will also act as a precaution and safeguard for the structures being demolished and its surroundings during the demolition. Steel jacks and wooden beans will also be used to ensure that the stability of the structure during the demolition process.* (enfazi mizjuda)

Jidher li l-kaz odjern twieled mill-fatt li l-Awtorita` kienet qed tinterpreta tali *method statement* filli jirrikjedi tassattivament u kwindi f'kull cirkostanza (irrispettivament mill-bzonn o meno), l-uzu ta' *jacks / supports* ghas-soqfa filwaqt li l-interpretazzjoni tal-Perit inkarigat hija dik li dawn ma kenux mehtiega b'mod awtomatiku imma biss fejn ikun hemm bzonn. L-ufficjal Caruana kompla jixhed:

> *Upon being asked by the Tribunal, I can confirm that a representative of the applicant did in actual fact draw my attention to the fact that according to them paragraph 6 of page 5 of the method statement does not automatically require the*

installation of jacks but that these would be needed to be installed only were deemed necessary.

Jidher ukoll li, minkejja dak imfisser fl-email datata 21 t'Awwissu, 2024, u cioe` li "*clearance will be issued once proof of the above (steel jacks) is provided and the declaration is submitted on E-apps*", l-Awtorita` ghazlet li xorta wahda tohrog il-penali amministrattiva ghar-raguni imfissra hawn fuq wara li l-istess Caruana ikkonsulta mas-superjuri tieghu ("*I spoke with one of the management and they said that a penalty should be issued.*").

Illi ghat-Tribunal, id-dicitura utilizzata fil-method statement hija cara u ma taghti lok ghal ebda dubbju. Support u scaffolding iridu jigu utilizzati meta jigu meqjusin mehtiega ai fini ta' xoghol sigur u biex jigi evitat materjal li jaqa' mill-gholi. Id-dikjarazzjoni tal-metodu terga ttenni wkoll li l-iscaffolding jigu utilizzat f'kaz ta' demolizzjoni imma meta dan ikun necessarju bhala prekawzjoni. Huwa ghaldaqstant car li l-uzu tal-jacks ossija support ma kienx wiehed mehtieg a priori, anke f'kaz ta' demolizzjoni imma biss meta kellu jigi meqjus necessarju.

Fil-fehma tat-Tribunal il-paragrafu 6 hawn fuq citat ma jistax jigi interpretat b'mod iehor salv illi, sabiex l-Awtorita` setghet tassew tkun gustifikata fid-decizjoni taghha, din kellha tipprova li kienu jezistu cirkostanzi li jirrendu necessarju l-uzu ta' support kif allura kontemplat fil-*method statement* li allura, fin-nuqqas tal-*jacks* fuq is-sit u tenut kont in-necessita` taghhom, id-dikjarazzjoni tal-metodu ma tkunx giet debitament segwita. F'dan ir-rigward l-ufficjal Caruana ftit li xejn seta' jfisser il-htiega ta' tali support fuq is-sit salv illi rrefera ghal pagna 5, Section 6 "*where it is stated that steel jacks and wooden beams will also be used to ensure the stability of the structure during the demolition process. (...) I insist that the jacks should have been on site because demolition was taking place and no carting away was taking place at the time*."

Min-naha tieghu l-appellant Nicholas Farrugia fisser li:

"(J)*iena kont kellimt lill-Perit tieghi, ftiehmna fejn kellhom isiru l-gakkijiet, sussegwentement gew l-ufficjali tal-Awtorita` u talbu li jsiru gakkijiet fejn fil-fehma taghna ma kienx hemm bzonn pero` ahna xorta wahda ghamilnihom skont ma qalulna huma*.

A sostenn ulterjuri ta' dan il-Perit Casha ikkonferma li, fil-fehma teknika tieghu, fil-verita` ma kien hemm ebda htiega ghall-uzu tal-*jacks* fuq is-sit:

> "*Jiena flimkien mas-Sur Farrugia ddeterminajt li ghandna bzonn gakkijiet fuq naha minnhom li jmiss mal-garaxxijiet. Dan sar biex nikkonsolidaw peress illi kien hemm xi konsenturi u dan gie indirizzat anke skont il-method statement. Meta konna qeghdin inwaqqghu ndunajna li x-xibka kienet bil-kontra u li allura l-istruttura ma kienetx qed isserrah fuq il-bini tal-gar u allura fil-fehma tieghi l-gakkijiet gew redundant pero` nghid li dawn xorta saru u xorta baqghu hemmhekk u bghatna wkoll ritratti taghhom lill-BCA. Nghid b'referenza ghar-risposta tal-Awtorita` f'dan l-appell illi l-method statement kien jindika li l-gakkijiet ser isiru skont il-bzonn u li dawn ma kienux iridu jsiru bilfors.*"

Illi t-Tribunal isib li kien jispetta lill-Awtorita` li tressaq ragunijiet teknici u specifici ghas-sitwazzjoni riskontrata fuq is-sit li, bil-kontra tas-surreferit, kellhom jindikaw il-htiega jew necessita` tal-uzu tal-jacks fis-sit – anke meta, skont il-perit tekniku, dawn ma kenux hekk mehtiega. Mistoqsi sabiex jiggustifika l-htiega tal-jacks fuq is-sit, l-ufficjal Caruana irrefera generikament ghall-method statement u ghall-fatt li kien hemm demolizzjoni ghaddejja fuq is-sit meta huwa car li l-*method statement* ma kienx jindika l-htiega ta' *jacks / support* a priori imma biss kif rez necessarju mix-xoghol. Fil-fehma tat-Tribunal, ir-ragunijiet moghtija mill-ufficjal ma jaghmlu l-ebda referenza ghal xi aspett li jikxef tali htiega. Ghandu jigi kkunsidrat ukoll li, skont ix-xhieda moghtija minn Caruana, meta acceda fuq is-sit – almenu fir-rigward ta' dan il-kaz huwa ma sabx xoghol ghaddej – "*On the 5th August, the Authority received a report concerning dust emissions* (…) *I confirm that no works were being carried out.* (…) *An inspection was carried out on the 6th August and I can confirm that no works were being carried out. I can state that I acceded on site with Perit Casha and I noted that the site had been rendered as per the method statement and therefore action had been taken.*" Ma jidher li gie nutat xejn fil-5 t'Awwissu, 2024 li kien irendi necessarji l-gakkijiet f'dak l-istadju u fil-fatt huwa l-istess ufficjal Caruana li jikkonferma li "*I am not an architect and* (…) *therefore I have no knowledge of how the structure is in this case and how this affects the necessity or otherwise of jacks on site.*"

It-Tribunal jinnota li l-prova tan-necessita` tal-gakkijiet kienet mehtiega mhux biss in vista tal-verzjoni moghtija mill-Perit Casha imma wkoll in vista tal-fatt li l-penali jidher li nharget

kontra dak li gie kkonfermat bil-kitba mill-istess ufficjal permezz tal-email datata 21 t'Awwissu, 2024. It-Tribunal jinnota ulterjorment li l-kontro-ezami tal-Perit Casha ghalkemm rizervat ma sarx.

Ghaldaqstant huwa car li, tenut kont id-dicitura uzata fil-*method statement* u wkoll il-fatt li ma tressqitx prova ta' aspetti li, skont l-istess *method statement*, kienu jirrendu l-uzu ta' support / jacks necessarji, it-Tribunal isib li l-Awtorita` ma rnexxilhiex tiggustika d-decizjoni taghha datata 23 t'Awwissu, 2024.

Din id-decizjoni qed tigi riflessa wkoll fl-appell numru 50/2024 deciz illum stess li jirrigwardja l-istess mertu.

Decide

Għaldaqstant it-Tribunal, in vista tar-raġunijiet imsemmija hawn fuq qiegħed jilqa' l-appell u kwindi jirrevoka d-decizjoni appellata datata 23 t' Awwissu, 2024.

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