IT-TRIBUNAL TAL-BINI U L-KOSTRUZZJONI

Today, 23 of Ottubru, 2024

Rikors numru: BCT/50/2024

Members:

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.

Azmal Kalapura on behalf of RD Consultants Limited

vs

Awtorita' tal-Bini u l-Kostruzzjoni

The Tribunal,

Having seen the appeal filed by means of an *email* dated 27th August, 2024 by which the appellant contested the decision delivered by the Authority on the 23rd August, 2024 by which the Authority imposed and administrative penalty of one thousand euros (€1000) after having determined that "*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*".

Having seen the reply by which the Authority contested the appeal for the following reasons:

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.*

Having seen all acts and documents.

Having heard the testimony of Rodrick Cassar and Perit Matthew Casha during the sitting of the 24th September, 2024. Having also heard the testimony of Nicholas Farrugia in appeal 49/2024 connected to this one and that the evidence heard in both appeals applies with regards to each other as agreed during the same sitting of the 24th September, 2024.

Having heard the testimony of Jake Caruana during the sitting of the 3rd October, 2024.

Having heard the testimony of all witnesses and having seen all documents filed.

Having seen that during the sitting of the 3rd October, 2024 the evidence stage was closed and the case was adjourned for delivery of judgment.

Having seen also that this appeal deasl with the same merits of appeal 50/2024

Considered

That through its decision dated August 23, 2024, the Authority contends that the applicant failed because on August 22, 2024 as well as in the previous days and months, demolition works were carried out not in compliance with Subsidiary Legislation 623.06 as in breach of the method statement.

In support of this, Jake Caruana, an official within the appealed Authority, explained how the penalty and the stop notice were issued on August 22, 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.*" The same witness confirms that the appellant subsequently rectified this aspect: "*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.***" (emphasis added)

That the relative *method statement* was also filed whereby, with regards to the use of *jacks* which, according to the Authority had to be present on site, point 6 of page 5 cited in the Authority's reply expressly provides as follows:

> *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)

The current case arose from the fact that the Authority is interpreting such a method statement as requiring categorically and therefore in every circumstance (regardless of the need or otherwise), the use of jacks / supports for the roofs while the interpretation of the Architect in charge is that they were not required automatically but only where necessary. Officer Caruana continued to testify:

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.

Notwithstanding what is stated in the email dated 21st August 2024, that "*clearance will be issued once proof of the above (steel jacks) is provided and the declaration is submitted on E-apps*", the Authority chose to still issue the administrative penalty after Caruana apparently consulted with his superiors ("*I spoke with one of the management and they said that a penalty should be issued.*").

That for the Tribunal, the wording used in the method statement is clear and does not allow space for doubt. Support and scaffolding must be used when they are considered necessary for safety purposes and to avoid material falling from a height. The method statement reiterates that the scaffolding is to be used, even in case of demolition, when this is necessary and as a precaution. It is therefore clear that the use of jacks or support was not necessary *a priori*, even in the case of demolition, but only when it was deemed necessary.

In the opinion of the Tribunal, paragraph 6 quoted above cannot be interpreted in another way except that, so that the Authority could really be justified in its decision, it had to prove that there were circumstances that rendered the use of supports / jacks necessary. In this regard the officer Caruana could not explain the need for such support on the safe site except that he referred to page 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*."

Nicholas Farrugia explained in his testimony that he had spoken to his architect:

"(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*.

Perit Casha than confirmed that, in his technical opinion, there was no real need for *jacks* on site:

> "*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.*"

That the Tribunal finds that it was expected of the Authority to put forward technical and specific reasons indicating a situation onsite which proved the need or necessity of the use of the jacks - even when, according to the technical architect, they were not so necessary. Asked to justify the need for jacks on the site, officer Caruana referred generically to the method statement and to the fact that there was ongoing demolition on the site when it was clear that the method statement did not indicate the need for jacks / support *a priori* but only as deemed necessary by the work even in the case of demolition. In the opinion of the Tribunal, the reasons given by the officer do not make any reference to any aspect that reveals such a need. It should also be considered that, according to the testimony given by Caruana, when he accessed the site - at least in relation to this case, he did not find any ongoing work – "*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.*" There does not seem that anything particular was noted on the 5th August, 2024 which rendered such jacks necessary and, in fact, Caruana confirmed "*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.*"

The Tribunal notes that the proof of the necessity of the hooks was required not only in view of the version given by Perit Casha but also in view of the fact that the penalty seems to have been issued contrarily to what was confirmed in writing by the same officer through the email dated August 21, 2024. The Tribunal further notes that the cross-examination of Perit Casha, although reserved, was not carried out.

Therefore it is clear that, taking into account the wording of the method statement and also the fact that no evidence was presented of aspects which, according to the same method statement, would render the use of support / jacks necessary, the Tribunal finds that the Authority has not succeeded in justifying its decision dated August 23, 2024.

This decision is also being reflected in the appeal number 49/2024 decided today that concerns the same merit.

Decide

For these reasons the Tribunal is thus upholding the appeal and revokes the decision dated 23rd August, 2024.

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