

QORTI TAL-APPELL

IMHALLFIN

**S.T.O. PRIM IMHALLEF SILVIO CAMILLERI
ONOR. IMHALLEF TONIO MALLIA
ONOR. IMHALLEF JOSEPH AZZOPARDI**

Seduta ta' nhar il-Gimgha 28 ta' April 2017

Numru 44

Rikors numru 533/16

Waste Collection Limited

v.

**Kunsill Lokali San Giljan u ghal kull interess illi jista' jkollha
Galea Cleaning Solutions JV u kull min jifforma parti minn
Galea Cleaning Solutions JV**

Il-Qorti:

Dan huwa appell imressaq fis-7 ta' Dicembru, 2016, mis-socjetá rikorrenti Waste Collection Limited wara decizjoni datata 21 ta' Novembru, 2016 moghtija mill-Bord ta' Revizjoni dwar il-Kuntratti Pubblici (minn hawn 'il quddiem imsejjah "il-Bord") fil-kaz referenza SC 52-04/2016 (kaz numru 1005).

Dan il-kaz huwa marbut ma' sejha ghall-offerti li hareg il-Kunsill Lokali ta' San Giljan "*for the cleaning of access needs and access only roads in an environmentally friendly manner, emptying of litter and dog bins, washing of bins and roads*". Ghal dan il-kuntratt intefghu diversi offerti, fosthom tas-socjetá appellanti Waste Collection Limited li, pero`, ma gietx maghzula, bil-kuntratt jigi rakkomandaat li jinghata lill-konsorzju intimat, Galea Cleaning Solutions JV. Dan l-ahhar konsorzju gie maghzul bhala li ressaq l-orhos offerta. L-imsemmija socjetá Waste Control Limited appellat minn din id-decizjoni lill-Bord li b'decizjoni tal-21 ta' Novembru, 2016, cahad l-appell u kkonferma d-decizjoni tal-awtoritá kontraenti. Id-decizjoni tal-Bord hi s-segwenti:

"Having noted this Objection filed by Waste Collection Ltd (hereint after referred to as the Appellant) on 28 October 2016, refers to the Contentions made by the latter with regards to the award of Tender of Reference SC 52-04/2016 listed as Case No 1005 in the records of the Public Contracts Review Board, awarded by Kunsill Lokali San Giljan (herein after referred to as the Contracting Authority)

"Appearing for the Appellant: Dr Robert Tufigno

"Appearing for the Contracting Authority: Dr Stefano Filletti

"Whereby, the Appellant contends that:

"a) In the notice of award , the Recommended Bidder was referred to as "*Galea Cleaning Solutions Ltd*", which company does not exist, so that the award was given to a non existing entity. In this regard, the Appellant maintains that the Recommended Bidder should be disqualified from the Adjudication Process.

"b) From the rates as quoted by the Recommended Bidder, the wages costs will be below those dictated in the Local Legislation.

“This Board also noted the Contracting Authority’s “*Letter of Reply*” dated 7 November 2016 and its verbal submissions during the Public Hearing held on 15 November 2016, in that:

“a) Kunsill Lokali San Giljan insists that the Recommended Bidder submitted his offer under the proper legal entity of a “*Joint Venture*”. At the same instance, all documentation submitted and on which evaluation was carried out indicated the Joint Venture.

“It was only during the notification of award, through a genuine human error, that the work “*Limited*” was written instead of “*JV*”, which mistake was eventually rectified by the Contracting Authority.

“b) Kunsill Lokali San Giljan maintains that enough proof and documentation was submitted by the Recommended Bidder to ensure them that the former will pay wage rates in accordance with the Local Regulations.

“This same Board also noted the Testimonies of thee witnesses namely”

“i) Dr Claudette Fenech duly summoned by Waste Collection Ltd;

“ii) Mr Paul Spiteri duly summoned by Kunsill Lokali San Giljan.

“The Transcript of the latter is herewith attached.

“This Board, after having treated the merits of this case, arrived at the following conclusions

“1. With regards to the Appellant’s First Grievance, this Board after having examined the relative documentation and heard submissions from all parties concerned, opines that Galea Cleaning Solutions JV’s submission was correctly made in the name of the Joint Venture, so that from the submissions’ point of view, the Appellants clearly distinguished the entity through which they were submitting their offer.

“On reviewing the documentation relating to the assessment of the Recommended Bidder’s offer, all documentation, reference and evaluation thereof was made on the Joint Venture as properly indicated by the Recommended Bidder himself.

“The fact that the Notice of Award was published, on the Notice Board of the Contracting Authority with an inadvertent human error by including the word “*Limited*” instead of “*Joint Venture*” does not in any credible way, nullify or effect whatsoever the evaluation procedure and the eventual award to the Recommended Bidder.

“In this respect, it was credibly established that, once the mistake was noted, Kunsill Lokali San Giljan amended it accordingly. The

documentation and credible submissions by the Contracting Authority asserts the fact that the Evaluation Board carried out its function in a fair and transparent manner.

“At the same instance, this Board opines that the inadvertent mistake in publishing the name of the Recommended Bidder under the title of a Limited Liability Company instead of a Joint Venture is trivial. In this regard, this Board does not uphold the Appellant’s First Grievance.

“2. With regards to the Appellant’s Second Grievance, this Board, as had on many occasions, would strongly remark that it is not the jurisdiction of this Board to delve into whether the rates quoted by the Recommended Bidder would lead to precarious working conditions since the Evaluation Board are assured that the wages to be paid to workers are in conformity with the Local Labour Regulations.

“In this regard, from documentation in possession of this Board, such an assurance is evident and therefore, the Board is justifiably satisfied that the wage rates to be paid to workers by the Recommended Bidder do not lead to precarious working conditions. In this regard, this Board does not uphold the Appellant’s Second Grievance.

“In view of the above, this Board finds against Waste Collection Ltd and recommends that the deposit paid by the latter should not be refunded”.

L-imsemmija socjetá Waste Collection Limited issa qed tappella mid-decizjoni li ha l-Bord ghal quddiem din il-Qorti u ssostni (i) li l-agjudikazzjoni saret hazin meta saret a favur Galea Cleaning Solutions Limited u (ii) il-Bord ma qiesx bis-serjeta l-aggravju taghha li l-pagi tal-haddiema mal-konsorzju preferut ma kienux konformi mal-ligijiet tal-pajjiz.

Wara li semghet it-trattazzjoni tad-difensuri tal-partijiet u rat l-atti kollha tal-kawza u d-dokumenti esebiti, din il-Qorti sejra tghaddi ghas-sentenza taghha.

Ikkonsidrat:

Illi fir-rigward tal-ewwel aggravju, din il-Qorti taqbel mad-decizjoni li ha l-Bord fis-sens li l-izball li sar (deskritt bhala wiehed ta' 'typing'), mhux wiehed li ghandu jwassal ghan-nullitá tal-agjudikazzjoni. Min kellu jigi dikjarat bhala li tefa' l-ahjar offerta kien jirrizulta car, u zball fl-indikazzjoni tal-grupp maghzul ma jtellifx dak li sar. Del resto, fl-udjenza quddiem il-Bord, dan l-izball gie sollevat u instab li kienet saret korrezzjoni, u s-socjetá appellanti, ghalhekk, ma tistax tibqa' issostni zball li gie rrangat waqt is-smigh tal-appell taghha. Jekk hasset li l-posizzjoni taghha giet mibdula bil-korrezzjoni li saret, setghet titlob posponiment jew anke differiment biex tirregola ruhha, izda ma ghamlet xejn minn dan u halliet il-kaz ikompli jinstemgha. Hi x'inhi, hija l-fehma tal-Qorti, li zball zghir registrat fuq in-notice board tal-Kunsill Lokali ma jhassarx il-fatt li saret agjudikazzjoni valida favur il-konsorzju intimat. Dan qed jinghad ghax li jirrizulta huwa li l-isem ta' konsorzju rebbieh tnizzel hazin fuq in-notice board, mhux li l-agjudikazzjoni saret b'isem hazin. Zball fl-avviz tad-decizjoni ma jhassarx il-validitá tad-decizjoni infisha.

Dan l-ewwel aggravju hu, ghalhekk, michud.

Fir-rigward tat-tieni aggravju, il-Bord kien konvint li l-kumitat ta' evalwazzjoni kien ivverifika li s-socjetá intimata toffri lill-impjegati taghha kondizzjonijiet ta' xoghol kompatibbli mal-ligijiet tal-pajjiz. Is-socjetá rikorrenti ma gabet ebda prova li turi l-kontrarju. Hi tirraguna illi peress illi l-prezz tal-ahjar offerent huwa inqas minn taghha, isegwi bilfors illi hemm mill-prekarjat. Din, pero`, ma hija xejn hlief deduzzjoni gratwita tal-istess socjetá rikorrenti, priva minn kull prova.

Evalwazzjoni tal-offerti saret skont kriterji stabbiliti li jirrigwardaw ukoll rati li bihom il-kuntratturi ghandhom ihallsu lill-impjegati. Ma jirrizultax li saret evalwazzjoni hazina, u fin-nuqqas ta' prova mod iehor, din il-Qorti, bhall-Bord qabilha, ma ghandhiex fuqhiex thassar id-decizjoni tal-kuntratt evalwattiv.

Il-fatt li l-*joint venture* in kwistjoni ma ghandhiex personalitá guridika huwa irrilevanti f'dan l-istadju, ghax il-ligi applikabbli dak iz-zmien (l-Artikolu 32 (1) tal-Avviz Legali 296 tal-2010) jippermetti offerti minn gruppi minghajr htiega li, fl-istadju ta' evalwazzjoni, ikollhom forma legali specifika. Huwa biss fi stadju tal-iffirmar tal-kuntratt mal-offerent preferut li l-awtoritá kontraenti tista' tinsisti li l-grupp jinholoq f'entitá legali separata.

Dan l-aggravju qieghed ukoll jigi michud.

Ghaldaqstant, ghar-ragunijiet premessi, tidisponi mill-appell ta' Waste Collection Limited billi tichad l-istess u tikkonferma s-sentenza li ha l-Bord ta' Revizjoni dwar il-Kuntratti Pubblici fil-21 ta' Novembru, 2016, bl-ispejjez kontra s-socjetá appellanti.

Silvio Camilleri
Prim Imhallef

Tonio Mallia
Imhallef

Joseph Azzopardi
Imhallef

Deputat Registratur
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