Qorti tal-Appell

Imhallef Anthony Ellul

Appell numru: 16/2016

Mostafa Khalifa (appellat)

Vs

Direttur Generali tas-Sigurta Socjali (appellant)

28 ta' April, 2017.

1. B'rikors prezentat fis-26 ta' April, 2016 l-intimat appella minn decizjoni tal-Arbitru tal-11 ta' Marzu, 2016 li biha ntlaqa' l-appell tar-rikorrent minn decizjoni tal-intimat li cahdet applikazzjoni ghall-ghajnuna ghall-qghad minhabba li d-Direttur Generali tas-Sigurta Socjali:

   "mhux sodisfatt li d-dhul fil-gimgha tieghek u tal-familja tieghek ma jeccedix l-iskala kif stabbilita mill-Att dwar is-Sigurta Socjali (Kap. 318) tal-Ligijiet ta' Malta".

2. Fid-decizjoni l-Arbitru qal:

   "Appellant testified that he has been living in Malta with his family since there was trouble in Libya. He had brought with him from Libya the sum of €12,500 but presently he and his wife are both unemployed. Given that the appellant has eight children living with him here, he explained that they are going through economic difficulties and that himself and his family manage their economic needs by getting financial assistance from their relatives monthly. Appellant declared that money transferred are effected through Banks and Financial Agencies.

   I confirm on oath that I have no moneys in Libya apart from 1500 Dinar which I sent there to help my daughter in her studies.

   The Umpire has been shown receipts from the Western Union showing money transferred from different people in Libya to appellant.

   Appellant declares that he has no further evience to produce.

   The Umpire saw the written acts of proceedings.

   Heard the representantive of the Department who testified about the calculations of the money being paid by the Department and the hefty rent paid by appellant which only in itself is even higher than what the Department would be paying as Social Assistance.

   The Umpire heard the testimony given by the appellant, particularly his confirmation on oath that he has no moneys in Libya apart from those that are being given to him by his relatives.

   The Umpire considers that he has no reason to believe the version given by the appellant, moreover the raison d'etre of the Department is simply based on a logical assumption,

however, with no evidence to support the Department's reasoning. In view of these circumstances, the appeal is upheld and the decision of the Department revoked".

3. L-intimat appella mis-sentenza. L-aggravji jirrigwarda l-apprezzament tal-provi li ghamel l-Arbitru.

4. L-appellat wiegeb li:

   i. L-appell hu null ghaliex prezentat *fuori termine*. Eccezzjoni li giet irtirata fis-seduta tal-21 ta' Frar, 2017.
   ii. Id-decizjoni hi gusta u ghandha tigi kkonfermata.

5. Il-qorti qrat l-atti. Wara d-digriet tat-28 ta' Marzu, 2017 l-appellat ipprezenta nota b'dokument. F'dak id-digriet il-qorti ordna lill-appellat sabiex jipprezenta:

   i. Rendikont tal-flus li rcieva kull xahar minn barra, mill-4 ta' Novembru 2014 sal-lum.
   ii. Dokumenti li juru li flus gew trasferiti lilu mill-esteru.

   Ghalkemm il-qorti ordnat li l-appellat u martu jattendu ghas-seduta tal-lum, hadd minnhom m'attenda.

6. Mill-atti jirrizulta li:

   i. Il-familja tal-appellat tikkonsisti minnu, minn martu u tmien uliedu.
   ii. Fis-26 ta' Lulju, 2014 l-appellat iffirma ftehim ta' lokazzjoni ghall-fond fil-Gzira b'kera ta' €800 kull xahar.
   iii. Fil-5 ta' Novembru, 2014 saret l-applikazzjoni ghall-ghajnuna socjali. Fiha ddikjara li jhallas €800 kera fix-xahar u ghandu kont bankarju mal-Bank of Valletta li fih hemm depozitata s-somma ta' €2,418.
   iv. Fl-1 ta' Frar 2015, l-appellat kera dar ghal sitt xhur. Il-kera kienet ta' €1,000 fix-xahar.
   v. Mid-dokumenti li l-appellat ipprezenta wara d-digriet tat-28 ta' Marzu, 2017 jirrizulta li:-

      (a) Fl-4 ta' Gunju 2014 intbaghatu flus lill-appellat, lill-mart l-appellat u whud minn uliedu f'total ta' €3,669.70. It-trasferiment tal-flus sar tramite l-Western Union.
      (b) Fit-22 ta' Ottubru 2014 intbaghtet is-somma ta' €300.
      (c) Fil-25 ta' Frar, 2015 intbaghtet is-somma ta' €837.
      (d) Fis-26 ta' Frar, 2015 intbaghtet is-somma ta' €837.

7. L-appellant isostni:

"Illi minn dawn il-provi huwa evidenti li familja ta' ghaxra min-nies u li jhallsu €1,000 fix-xahar bhala kera, qed tircievi xi ntrojtu minn x'imkien iehor u fid-dawl ta' dan, id-Dipartiment isostni

li mhux qed jircievi l-informazzjoni kollha minghand l-appellat u ghalhekk mhux sodisfatt li d-dhul fil-gimgha tal-appellat u l-familja tieghu ma jeccedux l-iskala stabbilita mill-Kap. 318….

13. L-esponent ha wkoll in konsiderazzjoni l-fatt, li dato ma non concesso, li verament din il-familja m'ghandhiex biex tghix hlief bis-servizzi socjali ta' Malta, xorta wahda tkun ghadha 'l boghod milli thallas imqar il-kera li l-appellat intrabat li ghandu jhallas kull xahar – ghalhekk ma ghandux ikun hemm l-icken dubju li l-arbitru kien zbaljat meta ddecieda favur l-appellat".

8. Hu minnu li man-nota tal-11 ta' April, 2017 l-appellat ipprezenta dik li tidher dikjarazzjoni ta' certu Mohames Ali Mohamed Aboabdlah. Fiha jinghad li hu hu l-appellat u jghinu finanzjarjament. Pero' l-qorti m'awtorizzatx lill-appellat biex iressaq provi godda. Ghalhekk dan id-dokument ma kellux jigi pprezentat. Dan apparat li d-dikjarazzjoni ma fih l-ebda dettalji ta' kemm suppost ilha tinghata l-ghajnuna u fhix tikkonsisti. Fic-cirkostanzi l-qorti ma tistax tikkunsidraha.

9. Bid-digriet tat-28 ta' Marzu, 2017 il-qorti tat l-opportunita lill-appellat sabiex jipprezenta rendikont u provi dokumentarji dwar l-ghajnuna finanzjarja li rcieva minn barra. Mid-dokumenti li l-appellat ipprezenta hu altru milli evidenti li l-ftit flus li rcieva ma kinux iservu iktar minn ftit xhur ghall-hlas tal-kera. Dan apparti li mir-rendikont tal-bank bankarju ghall-perjodu minn Jannar 2014 sal-31 ta' Lulju 2014, jirrizulta li l-appellat zbanka biss is-somma ta' €743.95. F'perjodu ta' sitt xhur, familja b'ghaxar min-nies zgur li ghandha bzonn iktar minn dik is-somma biex tghix.

10. Ghalkemm fl-applikazzjoni l-appellat iddikjara li kien jircievi ghajnuna finanzjajra minghand oht il-mara, dan ma jirrizultax mid-dokumenti li pprezenta wara d-digriet tat-28 ta' Marzu, 2017. It-trasferiment ta' flus minn pajjiz ghall-iehor suppost tkun dokumentata. Din il-qorti tat lill-appellata l-opportunita sabiex jipprezenta dokumenti ufficjali li juru li effettivament kien qieghed jircievi flus, u kull ma pprezenta kienu dokumenti li fuq medda ta' iktar minn sena rcieva €5,642.41. Meta tqies il-kera gholja li jhallas, l-uniku konkluzjoni li tista' tasal ghaliha hi li probabilment ghandu ntrojtu minn band'ohra li ma ddikjarax lid-Dipartiment.

11. Maghmula dawn il-konsiderazzjonijiet il-qorti hi tal-fehma li l-appellant kellu dritt jiddikjara li ma kienx sodisfatt li d-dhul tal-appellat u l-familja tieghu ma jeccedix l-iskala stabbilita mill-Att dwar is-Sigurta Socjali (Kap. 318).

Ghal dawn il-motivi tilqa' l-appell u thassar id-decizjoni tal-arbitru tal-11 ta' Marzu, 2016 u minflok tichad l-appell li l-appellat ippropona wara d-decizjoni tal-appellant tal-11 ta' Frar, 2015. Spejjez a karigu tal-appellat.

Anthony Ellul.