



MALTA
TRIBUNAL TA' REVIZJONI AMMINISTRATTIVA
MAGISTRAT DR. CHARMAINE GALEA

28 ta' Frar 2020

Rikors Numru 82/2019

Reuben Cauchi

Vs

Awtorita` tal-Artijiet

It-Tribunal,

Ra r-rikors ta' **Reuben Cauchi** ipprezentat fit-2 ta' Settembru 2019 li permezz tieghu ppremetta s-segweni:-

“

1. *Illi dan huwa appell ai termini tal-artikolu 57 tal-Kap. 563 tal-Ligijiet ta' Malta minn decizjoni tal-Bord tal-Gvernaturi tal-Awtorita` tal-Artijiet li ttiehdet fis-26 ta' Lulju 2019 hawn annessa u mmarkata bhala **Dok. A**;*
2. *Illi l-esponent huwa l-permit holder ta' permess ta' zvilupp mahrug mill-Awtorita tal-Ippjanar bin-numru: PA 575 / 16 li awtorizzat "Proposed demolition of existing building, excavation to required rock level and construction of Level -1 storage, Level 0 and Level 1 Class 4B commercial, and apartments at Level 2 and Level 3" f'132, Triq il-Kbira c/w, Triq Iz- Znuber, Mellieha, Malta;*
3. *Illi dan il-permess ta' zvilupp gie akkordat mill-Kummissjoni tal-Ippjanar u ppublikat mill-Awtorita tal-Ippjanar fit-22 ta' Gunju 2016 (**Dok. B**) bil-premessa (Kundizzjoni Nru. 6) li sa qabel jinhareg il-Final Compliance (Completion) Certification il-Kummissjoni Nazzjonali Persuni b'Dizabilita' (KNPD) tikkonferma li s-sit huwa effetteivament accessibli ghall-persuni b'dizabilita:
*clearance from the National Commission for Persons with Disability verifying that the development fully satisfies the accessibility standards and/or any conditions imposed by the Commission in supporting document PA 575/16/57A**

4. *Illi minhabba l-accessibilita' tal-izvilupp kif propost ghall-persuni b'dizabilita' l-esponenti kien jehtiegli li jaghmel certu tibdilliet ghall-PA 575 / 16 u dan sabiex ikun konformi mal-KNPD u dan kif anke gie anke rimarkat mill-case officer fir-rapport li huwa hejja lill-Kummissjoni tal-Ippjanar (**Dok C**) ghall-konsiderazzjoni taghha li f' section 4.7 qal hekk:
Initially, the National Commission Persons with Disability did not recommend approval of plans (document 48a). Following the submission of fresh drawings (documents), the KNPD approved the proposed development from an accessibility point of view subject to a number of conditions (refer to document 57a).*
5. *Illi biex l-izvilupp ikun accessibli ghall-persuni b'dizabilita' jehtiegli li jkun konformi ma' linji gwida li l-KNPD tippublika u li fost l-ohrajn jitlob li fi kwalunkwe kaz l-entratura ghas-sit (Class 4B commercial) m'ghandiex ikun dizlivellar li jeccedi l-15.mm (**Dok D**):
Door thresholds should be level and flush with the surrounding floor. Where this is reasonably unavoidable, the tolerated change in level shall be not greater than 15 mm and the threshold shall be bevelled or chamfered. Thresholds which are no more than 6 mm high need not be bevelled.*
6. *Illi biex ikun konformi ma' din ir-regola tal-KNPD l-esponenti kien jehtiegli li l-entratura ghall-istabilliment kummercjali hekk kif propost ma' setghetx tkun min-naha ta' Triq il-Kbira imma kien jehtieg li ssir min-naha ta' Triq Znuber li kif muri mill-pjanta annessa bhala **Dok E** tinsab go streetscape, liema faccata tal-propjeta minhabba l-mod li hija d-disinjata din l-streetscape ta' spiss tkun esposta ghall-ilma tax-xita u l-gharghar qawwija tal-maltemp;*
7. *Illi waqt li kienu ghaddejja x-xogholijiet ta' kostruzzjoni l-esponenti kien jehtiegli li jiehu mizuri ta' prevenzjoni fuq dik il-parti tat-tarag li taghti quddiem is-sit minhabba li kienet fi stat hazin hafna kif ukoll li jaghmel qlugh temporanju ghall-ilma tax-xita biex ma' jgherriqlux l-propjeta';*
8. *Illi l-esponenti tkellem mal-Kunsill Lokali tal-Mellieha li min-naha taghhom ma' sabux oggezzjoni li jittiehdur dawn il-mizuri ta' prevenzjoni minhabba li l-access tat-triq ghall-pubbliku mhux ser ikun mittiefes. Sadanittant l-esponenti ghadha biex jitlob lill-Awtorita tal-Artijiet tapprova n-No Objection in Principle sabiex "to approve slight modification to staircase in order to improve access to property at site at Triq Znuber, Mellieha";*
9. *Illi l-Awtorita tal-Artijiet b'decizjoni tal-Bord tal-Gvernaturi cahad it-talba tal-esponenti "peress li diga ghamilt ix-xoghol qabel ma gejt ghall-awtorizzazzjoni tal-Awtorita', il-proposta ser tnaqqas l-access pubbliku u m'hemmx il-htiega ghal dan ix-xoghol ghax il-propjeta' diga ghandha access adekwat";*
10. *Illi mhux il-kaz li l-esponenti ha l-ligi b'idejh ghaliex ix-xogholijiet li l-Awtorita tal-Artijiet qed taghmel referenza ghalihom kienu biss mizuri temporanji ta' prevenzjoni. Lanqas ma' huwa l-kaz li bit-talba hekk kif propost ser jitnaqqa l-access ghall-pubbliku kif ser ikun trattat waqt dan l-appell;*
11. *Illi l-esponenti hassu aggravat b'din id-decizjoni u ghalhekk hteiegli li tigi intavolata dan l-appell skont id-dispozizzjonijiet tat-Taqsima IV tal-Att dwar il-Gustizzja Amministrattiva;*

Għaldaqstant, l-esponent jitlob li :-

- 1) Ikollu aċċess b'mod immedjat għall-file kollu dwar is-sit imsemmi hawn fuq;
- 2) Għar-raġunijiet suesposti u għar-raġunijiet kollha li jirriżultaw waqt it-trattazzjoni ta' dan l-appell, l-esponent, filwaqt li jagħmel referenza għall-provi kollha miġjuba minnu u għall-provi kollha li jirriżultaw waqt it-trattazzjoni ta' dan l-appell qiegħed umilment jitlob lil dan l-Onorabbli Tribunal jogħġbu jhassar u jirrevoka d-deċiżjoni tal-appellat Bord tal-Gvernaturi tal-Awtorita` tal-Artijiet, meħuda fit-23 ta' Lulju 2019 u kkomunikata lill-esponent fl-erbatax (14) ta' Awissu u konsegwentement jordna li t-talba / applikazzjoni tigi akkordata filwaqt li jiehu kwalsijasi provvedimenti ieħor li dan it-Tribunal jidhirlu xieraq u opportun, u bl-ispejjeż kontra l-Awtorita` intimata."

Ra r-risposta **tal-Awtorita` ta' l-Artijiet** ipprezentata fid-19 ta' Settembru 2019 li permezz tagħha eccepjiet is-segwentijiet:-

“

1. Illi l-Awtorita` esponenti irceviet l-Appell tal-Appellant Reuben Cauchi. L-Awtorita` ma taqbilx mal-kontenut tar-Rikors tal-Appell hekk kif imressaq u per konsegwenza qiegħda tinterponi din l-umli Risposta tagħha;
2. Illi din il-kawza u l-appell jitrattaw decizjoni li ha l-Bord tal-Gvernaturi tal-Awtorita` tal-Artijiet in konnessjoni ma' talba li għamel l-appellant dwar zvilupp illi hu kien lehaq għamel qabel ma gab il-kunsens tal-esponenti;
3. Illi tajjeb li jinghad ukoll li l-Appellant certament kien jaf jew kellu jkun jaf li l-Awtorita` Intimata kellha tkun mhux biss infurmata izda jigi ottjenut minghandha l-permess qabel ma jibda xogħol strutturali bhal dak li gie mwettaq mill-appellant.
4. Fil-kuntest jidhol l-element ta' dak li huwa "ragonevoli" ('reasonableness') in linea ta' konsiderazzjoni ta' dritt u li għandu jkun segwit minn awtorita` pubblika meta tiddeciedi jew tezercita d-diskrezzjoni tagħha.

H.W.R Wade (Administrative Law") jikkumenta hekk –

"A person in whom is vested a discretion must exercise hi discretion upon reasonable grounds. A discretion does not empower a man to do what he likes merely because he is intended to do so – he must not in the exercise of his discretion do what he likes but what he ought. In other words, he must by the use of his reason ascertain and follow the course which reason directs. He must act reasonably."

Ikompli hekk –

"The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the court must not usurp the discretion of the public authority which Parliament appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts ultra vires. The court must therefore resist the temptation to draw the bounds too tightly, merely according to its own opinion. It must strive to apply an objective standard which leaves to the deciding authority the full range of choices which the legislature is presumed to have intended. Decisions which are extravagant or capricious cannot be legitimate. But if the decision is within

the confines of reasonableness, it is no part of the court's function to look further into its merits.

With the question whether a particular policy is wise or foolish the court is not concerned ; it can only interfere if to pursue it is beyond the powers of the authority. As Lord Halisham L.C. has said [in re W (An Infant) – 1971 –A.C. 682 at 700] two reasonable persons can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable. This is not therefore the standard of “the man on the Clapham omnibus”. It is the standard indicated by a true construction of the Act which distinguishes between what the statutory authority may or may not be authorised to do. It distinguishes between proper use and improper abuse of power. It is often expressed by saying that the decision is unlawful if it is one to which no reasonable authority could have come.

Lord Greene MR fil-kawza “Associated Provincial Picture Houses Ltd. V. Wednesbury Corporation” [1948] 1 KB 223 ighid hekk –

“It is true that the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to the exercise of statutory discretion often use the word ‘unreasonable’ in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider.

5. *Minn hawn johrog car illi l-Awtorita’ Appellata applikat id-diskrezzjoni taghha fil-parametri tar-ragjonevolezza u ghall-konsiderazzjonijiet li huma rilevanti ghall-kaz li kellha quddiemha. Tant huwa hekk li l-Awtorita’ rat ukoll li x-xoghol propost ma kienx fl-interess tal-pubbliku in generali;*

6. *Isewgi mis-suespost, bhala konkluzzjoni ghalhekk, li l-Awtorita’ Intimata fl-ewwel lok applikat il-ligi u fit-tieni lok agixxiet skont principji amministrattivi u issodisfatt il-principju generali amministrattiv tar-ragjonevolezza ghad-decizjoni taghha [Vide zewg sentenzi fl-ismijiet ‘CCD Limited v. Awtorita’ Dwar it-Trasport ta’ Malta’ tal-Prim’ tal-PAQC datata 17/6/2013 u tal-Qorti tal-Appell datata 18/7/2017]. L-Awtorita’ kellha diskrezzjoni li hija ezercitat fil-limiti tar-ragjonevolezza u per konsegwenza dan it-Tribunal ghandu jkun soddisfatt li l-Awtorita’ Intimata imxiet legalment korrett.”*

Sema’ x-xhieda;

Ra d-dokumenti kollha pprezentati;

Ra n-nota ta’ sottomissjonijiet tar-rikorrent;

Ra li r-rikors thalla ghal-lum ghas-sentenza.

Ikkunsidra:

Illi r-rikorrent hassu aggravat b’decizjoni tal-Bord tal-Gvernaturi tal-Awtorita’ ta’ l-Artijiet datata 23 ta’ Lulju 2019 u komunikata lilu permezz ta’ ittra datata 26 ta’ Lulju 2019 li permezz taghha gie mgharraf illi l-applikazzjoni tieghu “to

approve slight modification to staircase in order to improve access to property at site at Triq iz-Znuber, Mellieha” kienet qieghdha tigi michuda peress li diga kien ghamel ix-xoghol qabel ma inghata awtorizzazzjoni mill-Awtorita`, u anke peress li l-proposta kienet se tnaqqas l-access pubbliku u li ma kienx hemm htiega ghal dan ix-xoghol ghaliex il-proprjeta` diga kellha access adegwat.¹

Mill-provi jirrizulta illi r-rikorrent ghandu permess mill-Awtorita` ta' l-Ippjanar ghal *“proposed demolition of existing building, excavation to required rock level and construction of Level -1 storage, Level 0 and Level 1 Class 4B commercial, and apartments at Level 2 and Level 3”* u dan fir-rigward tas-sit 132, Triq il-Kbira kantuniera ma' Triq iz-Znuber, Mellieha.

Ir-rikorrent spjega illi huwa kellu progettat li jaghmel stabbiliment kummercjali fi Triq il-Kbira kantuniera ma' Triq Znuber gewwa l-Mellieha. Jirrizulta illi l-ahhar imsemija triq hija wahda mtarrga. Sabiex ikun konformi ma' linji gwida tal-Kummissjoni Nazzjonali ghal Persuni b'Dizabilita`, huwa kellu jispostja l-bieb principali ta' stabbiliment kummercjali minn Triq il-Kbira ghal Triq Znuber. Illi fil-fazi tal-kostruzzjoni hu u l-Perit tieghu irrealizzaw li meta taghmel ix-xita, il-fond kien qieghed jeghreq u ghalhekk immodifikaw it-tarag pubbliku li hemm fi Triq Znuber u li hu adjacenti ghall-faccata tal-istabbiliment progettat biex jiddevjaw l-ilma li jkun gej min-naha ta' fuq tat-triq. Illi din il-modifika tidher cara fil-film tal-esebixxa r-rikorrent stess (Dokumenr RC 1 a fol. 71) u mir-ritratt Dokument DP1 a fol. 74.

Illi siccome` l-imsemmi tarag kien wiehed pubbliku, il-Perit tar-rikorrent, wara li saret il-modifika msemmija iktar 'il fuq, talab awtorizzazzjoni lill-Awtorita` intimata *“in order to improve access to property”*. Illi pero` fil-mori tal-kawza, jirrizulta illi l-problema vera ma kinitx l-access izda l-ilma li kien qieghed jidhol fil-proprjeta` in kwistjoni. Kemm il-Perit tar-rikorrent u kemm ir-rikorrent spjegaw illi peress li ma setghux jaghmlu ghatba gholja, minhabba kwistjonijiet ta' access ghal persuni b'dizabilita, allura l-problema aggravat ruhha.

Illi fil-mori giet esebita wkoll il-Board Memo li saret mill-ufficjal tal-Awtorita` intimata Norton Chalker. Il-konkluzzjoni tal-imsemmi ufficjal fl-istess Board Memo kienet is-segwenti *“It appears that as per submitted photos the continuity of stairs would hinder access to part of the adjacent property and from the other side stairs width would not impact pedestrian access.”* Ir-rakkomandazzjoni tieghu kienet li tinghata l-*“clearance with a view for disposal.”*²

Illi bir-rispett kollu lejn l-istess konkluzzjonijiet, dan it-Tribunal ma jirrizultalux illi t-tarag kien b'xi mod qieghed itellef l-access ghall-proprjeta adjacenti tant li

¹ Dok. A a fol. 6

² Dok NC1 a fol. 86

kif jidher fir-ritratt DP11-ahhar targa bl-ebda mod ma hi ta' xkiel ghax ma jirrizultax illi hemm xi access fl-istess punt ghall-bini adjacenti.

Illi fil-mori r-rikorrent esebixxa wkoll ittra datata 20 ta' Dicembru 2019 li permezz taghha l-Kunsill Lokali tal-Mellieha ma sabx oggezzjoni li nqatghu 2.9 metri tul 'l gewwa mill-ewwel targa ghal 1.2 metri wisa' bil-kundizzjoni li jsir forma ta' lqugh permanenti bejnu u l-vojt li nholoq.³ Illi minkejja din in-nuqqas ta' oggezzjoni da parti tal-Kunsill Lokali, li *del resto* intalbet wara li kien tlesta x-xoghol, it-Tribunal jirrileva illi l-Awtorita` kompetenti li setghet semmai tohrog xi forma ta' approvazzjoni ghal dak li ghamel ir-rikorrent kienet biss l-Awtorita` intimata.

Illi wara li t-Tribunal ha in konsiderazzjoni dan kollu, huwa tal-umli opinjoni illi l-ewwel u qabel kollox ir-rikorrent kellu jevalwa r-riskji tal-gharghar qabel ma wettaq l-izvilupp in kwistjoni u fit-tieni lok seta' naqqas l-ingress tal-ilma billi ghamel modifiki, dejjem soggetti ghall-permess tal-Awtorita` intimata, li kienu inqas drastici minn dawk in kwistjoni. Illi fl-opinjoni ta' dan it-Tribunal, liema Tribunal huwa kompost ukoll minn membru tekniku, ir-rikorrent seta' laqa' ghall-ilma ferm iktar 'isfel fit-tarag u b'hekk ma kienx imiss it-tarag u jikkreja passagg quddiem il-faccata tal-istabbiliment progettat. Apparti minn hekk huwa wkoll possibbli li l-Gvern jimplementa numru ta' mizuri biex il-qawwa tal-ilma li tingabar fit-tarag in kwisjtjoni tigi mtaffija permezz ta' infrastruttura adegwata.

Illi filwaqt li t-Tribunal jifhem il-problema tal-ingress ta' ilma li ghandu r-rikorrent, madankollu ma jistghax jissanzjona illi c-cittadini jiehdu l-ligi b'idejhom. Di piu` stante l-mod kif giet redatta t-talba lill-Awtorita` intimata u cioe` "***to improve access to property***", it-Tribunal huwa tal-fehma illi l-istess Awtorita` kienet ragjonevoli meta iddecidiet li l-proprjeta` diga kellha access adegwat. Kif gia` inghad iktar 'il fuq dan huwa ampjament ippruvat minn harsa lejn ir-ritratt Dokument DP1. Illi ghalhekk it-tlett ragunijiet imsemmija fid-decizjoni appellata m'ghandhom xejn irragjonevoli jew ingustifikat fihom tenut kont li dak li kien qieghed jitlob ir-rikorrent rabtu mar-raguni li huwa xtaq jaghmel il-modifiki **biex itejjeb l-access ghall-proprjeta` tieghu.**

Illi stante li l-izvilupp propost jirrizulta li diga sar it-Tribunal qieghed jordna notifika ta' din is-sentenza lis-Sezzjoni ta' l-Infurzar tal-Awtorita` intimata ghal kull azzjoni spettanti lilha.

³ Ara email Dok RC2 a fol. 72

DECIDE

Ghaldaqstant it-Tribunal, ghar-ragunijiet hawn fuq esposti, qieghed jastjeni milli jiehu konjizzjoni tal-ewwel talba tar-rikorrent stante li illum hija sorvolata u jichad it-tieni talba filwaqt li jilqa' r-risposta tal-Awtorita` intimata.

Bl-ispejjez kontra r-rikorrent.

Dr. Charmaine Galea
President tat-Tribunal ta' Revizjoni Amministrattiva

Diane Gatt
Deputat Registratur

Notifika: Awtorita` ta' l-Artijiet, Sezzjoni tal-Infurzar, Auberge de Baviere, Valletta