MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF
RAYMOND C. PACE

Seduta tad-29 ta' Novembru, 2012

Appell Civili Numru. 43/2011

Rockcut Limited

vs

Bord tar-Revizjoni dwar Kuntratti Pubblici u d-Direttur Generali tad-Dipartiment tal-Kuntratti ghal kull interess li jista' jkollu

Il-Qorti,

I. PRELIMINARI.

Illi fl-10 ta' Novembru 2011 il-Bord ta' Revizjoni Dwar il-Kuntratti Pubblici ippronunzja s-segwenti decizjoni fl-ismijiet premessi: -

"RE: CT 4042/2010 - Tender for the excavation of an underground tunnel from St Andrew to Maghtab.

Reference is made to letter of objection filed with the Review Board on 21 June 2011.

As you are aware the call for tenders in caption is referred to as the Three-Package Tender and therefore it is regulated by the provisions of Regulation 83 of the Public Procurement Regulations 2010 (LN 296 of 2010). Regulation 83 (4) of the same regulations inter alia stipulates that:

"A complaint by the affected tenderer and any person having or having had an interest in obtaining a particular public contract must reach the Review Board within ten calendar days from the date of notification of the decision, which complaint shall be communicated by the Secretary of the Review Board to the Dept of Contracts at once. "

Please note that from documentation/information made available by the Department of Contracts it results that the Evaluation Committee's recommendation was approved by the General Contracts Committee in its meeting of 9th June, 2011 and the next day a notification to this effect was published by the Department of Contracts. Rockcut Ltd were notified of this decision on the 10th June 2010. On the 15th June 2010 the Department of Contracts sent a second letter amending the original in two places: the amount of deposit to be paid by the Complainant and also the date by which the complaint had to be filed. The fact that the second letter did not withdraw the first but merely was sent to correct the error in the amount of the deposit should not restart the counting of the 10 day period for filing the complaint since this is a time period established by law. Therefore, the term of appeal in respect of this tender commenced from the date when the award decision was originally notified to bidders, that is, from the 10 June 2011. On 21 June 2011 Architect Emmanuel Zammit filed an objection letter dated 20 June 2010 signed by Dr Albert Libreri (Borg Cole, Libreri & Associates Advocates) with the Review Board and this was accompanied by a deposit of €58,000. On the basis of the above, I have been instructed by the Public Contracts Review Board to inform you once the complaint was filed outside the mandatory 10 day period provided by law this appeal cannot be considered. In the

prevailing circumstances, necessary action is being taken to reimburse the appellant company with the deposit paid with the letter of objection."

Rat ir-rikors tal-appell ossia referenza tas-socjeta` Rockcut Limited datat 30 ta' Novembru 2011 fejn talbet lill-Qorti sabiex *in vista* tal-aggravji minnha mressqa tilqa' l-appell taghha u dan billi tirrevoka u thassar is-sentenza appellata. Bl-ispejjez kontra l-appellanti.

Rat ir-risposta tad-Direttur Generali tad-Dipartiment tal-Kuntratti datata 12 ta' Dicembru 2011 a fol 34 tal-process fejn sostna ghar-ragunijiet hemm indikati li d-decizjoni tal-Bord ta' Rivizjoni Dwar il-Kuntratti Pubblici hija gusta u timmerita konferma u ghalhekk l-appell interpost ghandu jigi michud. Fic-cirkustanzi l-esponenti jissuggerixxi li l-ispejjez ta' dan l-episodju jibqghu bla taxxa bejn il-partijiet.

Rat ir-risposta tal-appell tal-Bord ta' Revizjoni dwar il-Kuntratti Pubblici datata 22 ta' Dicembru 2011 a fol 39 tal-process fejn sostna ghar-ragunijiet hemm indikati li d-decizjoni tal-Bord ta' Revizjoni Dwar il-Kuntratti Pubblici hija gusta u timmerita konferma u ghalhekk l-appell interpost ghandu jigi michud bl-ispejjez taz-zewg istanzi kontra l-appellant.

Rat li dan l-appell kien appuntat ghas-smigh ghas-seduta tas-6 ta' Marzu 2012.

Rat il-verbal tas-seduta mizmuma fis-6 ta' Marzu 2012 fejn meta ssejjah l-appell deher Dr. Albert Libreri ghas-socjeta` appellanti rapprezentata mill-Perit Emanuel Zammit, Dr. Chris Falzon Scerri ghad-Direttur tal-Kuntratti u Dr. Franco Agius rapprezentant tal-istess. Deher ukoll Alfred Triganza bhala Chairman tal-Bord assistit minn Dr. Graziella Bezzina. Dr. Libreri talab li wara l-kliem "rikors tal-appell" jizdiedu l-kliem "ossia referenza". Dr. Falzon Scerri ma kellux oggezzjoni. Il-Qorti laqghet it-talba u ordnat il-korrezzjon kif rikjesta. Id-difensuri trattaw il-kaz. L-appell gie differit ghas-sentenza in difett ta' ostakolu ghad-29 ta' Novembru 2012.

Rat l-atti kollha tal-istess kawza inkluz id-decizjoni tal-Bord ta' Revizjoni Dwar il-Kuntratti Pubblici fl-ismijiet premessi datata 10 ta' Novembru 2011.

Rat id-dokumenti esebiti.

Rat l-atti kollha l-ohra tal-kawza.

II. KONSIDERAZZJONIJIET.

L-appell odjern huwa fis-sens li t-terminu ta' 10 t'ijiem indikat mil-ligi kellu jibda' jiddekorri mid-data tat-tieni notifikazzjoni tal-15 ta' Gunju 2011, ghaliex b'din id-Direttur tal-Kuntratti kien effettivament qed jikkoregi n-notifika precedenti tal-10 ta' Gunju 2011 u b'hekk l-appell sar entro t-terminu previst mill-Ligi fil-21 ta' Gunju 2011.

Din il-Qorti taqbel ma' dan l-aggravju ghaliex jirrizulta li f'dan il-kaz kontrarjament ghal dak li rritjeni l-Bord ta' Revizzjoni Dwar il-Kuntratti Pubblici l-Avviz tal-15 ta' Gunju 2011 effettivament issostitwixxa l-Avviz tal-10 ta' Gunju 2011 li d-Direttur tal-Kuntratti rrikonoxxa li kien skorrett fl-ammont ta' depozitu li kellu jigi depozitat. Mela ladarba dan huwa hekk mela l-aggravju odjern qed jigi milqugh.

Ghall-kompletezza din il-Qorti tirreferi ghar-risposta tad-Direttur tal-Kuntratti u dwar il-pregudizzjali abbazi tar-regolament 85 (5) tar-Regolamenti dwar il-Kuntratti Pubblici, jinghad li din il-Qorti ghal darb' ohra tiddikjara li ma taqbilx ma' l-intepretazzjoni tal-istess hemm moghtija u dan ghar-ragunijiet indikati fid-decizjoni ta' din il-Qorti fl-appell fl-ismijiet **"United Equipment Company Limited vs d-Direttur tal-Kuntratti et"** (A.I.C. (RCP) – 10 ta' Lulju 2012). Dan gie kkonfermat fis-sentenza tallum stess fl-ismijiet **"Design Solutions Limited vs Direttur tal-Kuntratti et"** (A.I.C. (RCP) – 29 ta' Novembru 2012). B'hekk din il-pregudizzjali qed tigi rigettata.

Dwar it-terminu ta' 10 t'ijiem indikat fl-**artikolu 83 (4) tal-imsemmija regolamenti,** din il-Qorti ma taqbilx li dan it-

terminu mhux perentorju u jista' jigi estiz. L-unika raguni ghaliex dan l-appell qed jigi milqugh huwa biss ghar-raguni fuq indikat u xejn izjed ghaliex terminu ta' appell huwa fih innifsu perentorju u ma ghandux jigi estiz jekk il-Ligi espressament ma tipprovdix ghal dan. Mela kull argument mibni fuq l-**artikolu 106 tal-Kap. 12** kemm mill-appellanti u mill-appellat hawn trattat qed jigi rigettat bhala legalment insostenibbli. Lanqas huwa minnu li r-regolamenti 5 u 6 tal-Avviz Legali 296 tal-2010 jawtorizzah li jaghmel dan. B'hekk anke din il-pregudizzjali qed tigi michuda.

Dwar il-posizzjoni tal-Bord ta’ Revizjoni dwar il-Kuntratti Pubblici din il-Qorti, kif gja ddecidiet precedentement, taqbel li tali Bord ma huwiex il-legittimu kontradittur u tillibera lill-istess mill-osservanza tal-gudizzju bhala parti f’dawn il-proceduri.

III. KONKLUZJONI.

Illi ghalhekk ghal dawn il-motivi, din il-Qorti, **taqta’ u tiddeciedi,** billi filwaqt li tilqa’ l-ewwel pregudizzjali tal-Bord ta’ Revizjoni dwar il-Kuntratti Pubblici fir-risposta tal-appell tieghu datata 22 ta’ Dicembru 2011 u tillibera lill-istess mill-osservanza tal-gudizzju bhala *parte* f’din il-procedura, u fil-waqt li tichad ir-risposta tal-appellat id-Direttur Generali tal-Kuntratti datata 12 ta’ Dicembru 2011, **tilqa’ l-appell interpost mill-appellanti s-socjeta’ Rockcut Limited datata 30 ta’ Novembru 2011 b’dan li qed thassar u tirrevoka d-decizjoni tal-Public Contracts Review Board fl-ismijiet premessi datata 10 ta’ Novembru 2011 u tiddeciedi u tiddikjara li l-oggezzjoni tas-socjeta’ appellanti prezentata fil-21 ta’ Gunju 2011 ma saritx *fouri termine* u konsegwentement tirrinvija l-kaz lill Bord ta’ Revizjoni Dwar Kuntratti Pubblici sabiex jittratta u jiddeciedi fil-mertu l-oggezzjoni maghmula skont il-Ligi fil-kaz “CT/4042/2010 - 'Tender for excavation of an underground tunnel from St. Andrew’s to Maghtab”**

Bl-ispejjez kontra id-Direttur Generali tal-Kuntratti appellat hlief ghal dawk tal-Bord ta’ Revizjoni Dwar Kuntratti Pubblici li huma a karigu tas-socjeta’ appellanti Rockcut Limited.

Moqrija.

< Sentenza Finali >

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