



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta tat-2 ta' Mejju, 2013

Appell Civili Numru. 126/2012

**Lawrence Fino f'isem u in rapprezentanza
tas-socjeta C. Fino & Sons Ltd.**

vs

L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar

Il-Qorti,

Rat ir-rikors tal-appell ta' Lawrence Fino f'isem u in rapprezentanza tas-socjeta C. Fino & Sons Ltd. tat-13 ta' Awwissu 2012 wara d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjannar tal-31 ta' Lulju, 2012,

Rat ir-risposta tal-appell tal-Awtorita li ssottometiet illi d-decizjoni ghandha tigi konfermata;

Rat l-atti u semghet lid-difensuri tal-partijiet;

Kopja Informali ta' Sentenza

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

A. Il-Kummissjoni ghall-Kontroll tal-Ambjent u l-Ippjanar, fit-3 ta' Frar 2011, irrifjutat l-applikazzjoni ghall-permess tal-izvilupp PA 503/1 0 "Site at Ta' Paskarella, Triq Guze Duca, Qormi: To erect billboard."

Iz-zewg ragunijiet ghar-rifjut kienu s-segwenti:

"1. The proposed billboard is not indicated as a designated site in the Permanent Billboard Site's Maps of the Policy & Design Guidance for Billboards and Signs and therefore in line with the first bullet point of Section 6.4 it is unacceptable. The proposed billboard does not even fail within the required criteria to which such additional sites could be acceptable in line with the second bullet point of the aforementioned section. Therefore it is contrary to Structure Plan Policy BEN 6.

2. The proposed billboard will increase the proliferation of advertising means in this stretch of road and therefore it will not comply with the third bullet point of Section 6.4 of the Policy & Design Guidance for Billboards and Signs."

B. In-nota tal-Perit Henry Attard ghall-Appellant, ipprezentata fit-2 ta' Marzu 2011, senjatament l-erba' punti segwenti:

"1. The board should note that other billboards that were not located on 'designated sites' in the Policy & Design Guidelines for Billboards and Signs have been approved by the DCC. Section 6.4 (bullet 2) clearly states that MEPA will consider other billboard, 'if in the opinion of MEPA, they are congruent to those indicated on the relative maps and their surroundings;

2. MEPA argued that approval of this billboard will result in 8 billboards on this road. This statement is completely incorrect. I have inspected all the billboards approved along this road and can confirm that only 2 approved

billboards (namely MB 53 and MB 38 - already in place) are facing this direction of the road. The other billboards face the opposite side of the road, i.e. facing traffic from Qormi towards Marsa. In our opinion this billboard will complement MB 53 and MB 38;

3. The proposed billboard is located in a major arterial road linking the central area to the north part of the island. Section 4.2 of the Policy provides an exception for the installation of billboards in 'some arterial and distributor roads;

4. The captioned billboard has been approved by the Malta Transport Authority since it does not interfere or obstruct the view of the pedestrians and vehicular traffic."

C. In-nota responsiva ta' Edward Borg ghall-Awtorita, ipprezentata fit-3 ta' Gunju 2011, inter alia t-tlett punti segwenti:

"5.1.5 The Tribunal is notified that this particular site is designated as an outside the development zone. For billboards, a selection exercise had been referred for Public Consultation whereas 114 sites had been designated. The Planning Directorate would also like to note that the aim of the 'designated sites' was to control the proliferation of such billboards. Thus in view that this proposed billboard does not fall within one of the designated sites in the permanent billboard site maps of the Policy and design guidance for Billboards and Signs, this cannot be accepted. Therefore this proposed billboard is against the first bullet point, outlining the acceptability of billboards within the 'designated sites' and the second bullet point of Section 6.4 of the Policy despite that it falls on a major road and approved by the Malta Transport Authority.

5.1.6 Although appellant is argued that other billboards were issued which are not located on 'designated sites'; however this is not valid as no permits were quoted by same. In addition, appellant is also arguing that from a site inspection, it resulted that there are only two

approved billboards along this road. However the Tribunal may wish to note that on Policy Maps 12 and 15 indicate that in Triq Guze' Duca, there are a total of 7 'designated sites' (namely MBB 35, 36, 37, 38, 52, 53, 54) facing both sides of the road. In this regard an additional billboard not within a 'designated site' within this road would lead to an unnecessary proliferation running counter to Section 6.4 (bullet 3).

5.1.7. Furthermore, the Authority refers to the policy document regulating such freestanding (large) billboard in which the criteria for approval are subject to Policy 4.2 and 6.4."

D. In-nota ulterjuri tal-Avukat Prof. Ian Refalo ghall-Appellant, ipprezentata fis-6 ta' Frar 2012, senjatament il-punti segwenti:

"A submission that no billboards are permissible on this road is evidently wrong and unfounded. The authority itself states that there are seven bill board on this road. So it is clear that the road can be used for putting up billboards. So much so that the authority is using the argument that there are indeed too many billboards on this road.

This is indeed a strange argument, as it conflicts directly with the approval of a billboard in permit PA 6829/07. The approval of this permit not only negates the argument that there are excessive billboards on this road; seeing that the authority itself has not shunned from granting further permits. It also raises the issue of discrimination. It has not been satisfactorily shown why the billboard in the cited permit is permissible while that of appellant is not. [...]

With regard to the argument that there are too many bill board on this road it has to be pointed out that this is not so. The claim by the authority is that there are seven billboards on this road. But MBB 35, 36, and 37 are very far from the site of the projected billboard and from the four remaining billboards only two face the direction of appellant's side of the road. Therefore it is quite clear that

the argument is not correct and that when put into perspective there is no overcrowding of billboards. Also erroneous is the reference in paragraph 4.5.2 of the Authority to Mriehel Bypass while the application concerns another road.

The argument of the authority refers to proliferation beyond designated sites. It is quite clear that the authority must decide and apply policies in relation to facts and circumstances as existing. It is clear that there is no situation here where there are excessive billboards. The authority may be arguing that this will bring about proliferation. But surely in the present state of play there is no proliferation whatsoever.

It is submitted that policies must be applied with the situation on the site in mind. The argument of an eventual proliferation does not really hold water when at present there is no evidence of such proliferation and when the authority itself has seen fit to issue other permits.

Of great importance is the fact that Transport Malta has found no objection whatsoever to the proposed billboard. It is clear that the billboard poses no danger to traffic, more so as it is over 50 metres from a junction. Surely in cases dealing with traffic safely the views of the transport authority should be given their due weight and not ignored."

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda proposta sabiex jigi stallat kartellun tar-reklami mdawwal minn gewwa (internally-illuminated, free-standing billboard), b'kobar ta' sitta b'tlett metri, gewwa ghalqa li tinsab il-barra mill-limiti tal-izvilupp biswit Triq Guze' Duca f'Hal Qormi.

Precedentement kienet diga giet intavolata applikazzjoni oħra simili għal din in ezami (PA 3021/06) fl-istess għalqa izda xi ftit metri l-bogħod mill-post in ezami, izda dik l-applikazzjoni kienet giet irtirata mill-Awtorita.

Ir-raguni ghar-rifjut huma bbazat fuq il-fatt li s-sit fejn qed tigi proposta l-billboard mhux fil-lista ta' siti identifikati permezz tal-Paragrafu 6.4 tal-Policy and Design Guidance - Billboards and Signs, u lanqas ma jirrizulta idoneju mal-ewwel tlett rekwiziti tal-istess paragrafu. Di konsegwenza l-proposta hi wkoll f'kunflitt mal-policy BEN 6 tal-Pjan ta' Struttura. Il-partijiet tal-Paragrafu 6.4 rilevati mill-Awtorita u rilevanti ghal-kaz in ezami huma s-segwenzi:

"6.4 Billboards will only be considered if:

- Within the designated sites as indicated in the relative maps (applicable to freestanding billboards only);
- There will be strict control over new sites apart from those indicated in the relative maps. These will only be permissible if they form part of new projected roads or if in the opinion of the Malta Environment & Planning Authority, they are congruent to those indicated on the relative maps and their surroundings;
- The advertisements or signage would not be injurious to amenity by virtue of size, position, location and proliferation;"

L-Awtorita tirrileva li i-billboard gie propost li jitqieghed bejn zewg siti ddesinjati propju ghal tali zvilupp; MBB 38 u MBB 52 kif indikati permezz tal-Mappet 12 u 15 tal-istess policy. Jigi rilevat ukoll li fit-triq in ezami, diga hemm seba' siti ddesinjati ghal dan it-tip ta' uzu, u di konsegwenza sejra tizdjet il-proliferazzjoni ta' dawn il-billboards - bit-mien wahda.

L-Appellant jargumenta li zewg billboards biss f'din it-triq iharsu fid-direzzjoni ta' din in ezami. Il-bqija jharsu fid-direzzjoni l-ohra, Jirrileva wkolli l-awtorita Transport Malta ma sabietx oggezzjoni ghal dan l-izvilupp u li semmaj il-billboard ser tkun il-boghod aktar minn hamsin metru minn traffic junction u di konsegwenza mhix ser tkun ta' perikolu ghat-traffiku.

Tajjeb li jigi rilevat li fil-konfront tal-Paragrafu 6.4, apparti li ma giex sottomess disinn tal-foundations/supporting structure ta' din il-billboard, mit-tmien rekwiziti l-ohra, l-Awtorita sabet oggezzjoni biss ghall-tlieta minnhom kif suespost. Irid jigi nutat ukoll li dan il-paragrafu jaghmilha tassattiva li sabiex freestanding billboard jigi approvat, irid ikun idoneju ma' r-rekwiziti kollha.

Madankollu mit-tlett rekwiziti li l-Awtorita oggezzjonat ghalihom, it-tieni u t-tielet rekwiziti huma pjuttost generici. Fic-cirkostanzi jidher li fejn qed jigi propost il-billboard mhux ser ikun ta' hsara partikolari lill-amenity, anke jekk semmaj il-qisien, ghamla, etc.. tal-billboard huma pjuttost standardizzati bhal kull billboard iehor.

Jibqa' pero l-argument tal-proliferazzjoni, izda anke jekk ghall-grazzja tal-argument dan il-punti jista' jigi sorvolat, fil-konfront tat-tieni rekwizit (li billboard jista' jigi permess biss fuq siti kif indikati mill-mappep annessi mal-policy jew f'toroq godda li ghandhom iridu jigu pprogettati) il-proposta in ezami mhix idoneja.

Hawnhekk il-policy tnehhi kull dubbju u taghmila cara li s-siti approvati jridu jkunu kongruenti (cjoe konsistenti) ma' dawk indikati fl-istess mappep.

Fic-cirkostanzi jidher li dan mhux il-kaz, u di konsegwenza dan l-appell ma jimmeritax kunsiderazzjoni favorevoli. Ikun inutile li jigi rilevat li Transport Malta ma sabietx oggezzjoni ghal din il-proposta, ghax tali kunsens per se ghalkemm essenzjali, ma jiggerantix l-approvazzjoni awtomatika ta' permess bhal dan in ezami.

Ghalhekk, in vista tal-kunsiderazzjorijiet kollha hawn fuq maghmula, u fuq kollox sabiex ikun konformi mal-policies tal-ippjanar vigenti, dan it-Tribunal qed jiddisponi minn dan l-appell billi jichad l-istess u jikkonferma ir-rifjut ghall-PA 503/10 mahrug mill-Kummissjoni ghall-Kontroll tal-Ambjent u l-Ippjanar, fit-3 ta' Frar 2011.

Ikkunsidrat

L-agravvji tal-appellant huma tnejn:

1. It-Tribunal injora l-commitment già ezistenti fit-triq rigward billboards u ma ntweriex għaliex is-sit indikat mill-appellant mhux idoneu meta t-triq hi già kommissa għal billboards oħra, mhux ser tinterfixxi mat-traffiku, billboards oħra, jew l-ambjent.
2. It-Tribunal illimita d-dritt ta' esprezzjoni tal-appellant mingħajr indhil sakemm ma jintwerewx raguni ta' ordni pubbliku jew restrizzjonijiet oħra permessi mill-ligi.

Il-kwistjoni kollha f'dan l-appell hu l-applikazzjoni mit-Tribunal tal-artikolu 6.4 tal-Policy and Design Guidance for Billboards and Signs. Il-Qorti mhix ser terga tirrepeti l-kontenut tal-ewwel tlett 'bullets' ta' dan l-artikolu, rilevanti għal kaz, għax huma riportati verbatim fid-decizjoni tat-Tribunal.

Hu pero opportun illi jigu riportati l-pragrafi decisivi tad-decizjoni:

Madankollu mit-tlett rekwiziti li l-Awtorita oggezzjonat għalihom, it-tieni u t-tielet rekwiziti huma pjuttost generici. Fic-cirkostanzi jidher li fejn qed jigi propost il-billboard mhux ser ikun ta' hsara partikolari lill-amenity, anke jekk semmaj il-qisien, għamla, etc.. tal-billboard huma pjuttost standardizzati bħal kull billboard iehor.

Jibqa' pero l-argument tal-proliferazzjoni, izda anke jekk għall-grazzja tal-argument dan il-punti jista' jigi sorvolat, fil-konfront tat-tieni rekwizit (li billboard jista' jigi permess biss fuq siti kif indikati mill-mappep annessi mal-policy jew f'toroq godda li għandhom iridu jigu pprogettati) il-proposta in ezami mhix idoneja.

Hawnhekk il-policy tneħhi kull dubbju u tagħmila cara li s-siti approvati jridu jkunu kongruenti (cjoe konsistenti) ma' dawk indikati fl-istess mappep.

Jidher għalhekk illi d-decizjoni tat-Tribunal kienet ibbazata fuq l-applikazzjoni ta' artikolu 6.4 (bullet 1) tal-guidelines u addottat din il-parti tal-artikolu bhala l-kriterju uniku għaliex il-permess gie rifjutat. Izzid li s-silta approvata jridu jkunu kongruenti (konsistenti) ma' dawk indikati fl-istess mappep.

B'hekk giet li skartat argument dwar commitment gia ezistenti fl-istess triq minhabba din il-parti tal-artikolu 6.4.

Il-Qorti tqis illi t-Tribunal applika hazin dan l-artikolu. Hu minnu illi l-artikolu 6.4 bullet 1 ighid illi applikazzjonijiet ghal billboards jigu kkunsidrati biss fis-siti indikati fil-mapep annessi pero fl-istess artikolu 6.4 bullet 2 il-policy taghmel zewg eccezzjonijiet ghar-regola cioe applikazzjonijiet f'siti godda jigu kunsirati ghalkemm b'mod strett (a) jekk it-talba ghal erezzjoni ta' billboards jintalab issir biex jitqghedu f'toroq godda progettati jew (b) jekk fl-opinijoni tal-Awtorita huma (cioe billboards) kongruenti, cioe simili jew co-ugwali (ara dizjunarju legali) ghal dawk (is-siti) fuq il-mapep annessi mal-guidelines u d-dintorni taghhom.

It-Tribunal injora t-tieni eccezzjoni ghar-regola stretta u filwaqt li jidher li ma tax importanza ghall-oggezzjonijiet tal-Awtorita u ssorvola l-kwistjoni tal-proliferazzjoni, waqaf biss fuq il-principju generali tal-artikolu 6.4 minghajr ma dahal fil-kwistjoni specifika hawn fuq imsemmija li bil-fors kienet timporta harsa approfondita jekk kienx hemm raguni valida ghaliex l-Awtorita wzat id-diskrezzjoni li l-gudelilnes jaghtuha, bil-mod kif ghamlet, jew jekk invece t-Tribunal kellux jirrevoka dik id-decizjoni tal-Awtorita minhabba kwistjonijiet ohra fosthom tal-commitment gia ezistenti fit-triq, kif sottomoss mill-appellant fost argumenti ohra.

Din il-Qorti taghmilha cara illi sakemm it-Tribunal jikkonsidra l-kwistjonijiet kollha mqajma u jiddeciedi dwarhom ma jkunx hemm rikonsiderazzjoni mill-gdid minn din il-Qorti dwar il-fatti li jkunu waslu tat-Tribunal ghad-decizjoni li tittiehed pero f'dan il-kaz id-decizjoni tat-Tribunal giet bbazata esklussivament fuq applikazzjoni hazina tal-policy billi ma ttiehidx in konsiderazzjoni b'mod adegwat mit-Tribunal jekk l-argumenti tal-appellant kienx tali illi jinducu lit-Tribunal jiehu decizjoni diversa mill-Awtorita ibbazata fuq l-applikazzjoni korretta tal-artikolu 6.4 fl-assiem tieghu, dejjem fid-diskrezzjoni moghtija mill-policy a rigward.

Kopja Informali ta' Sentenza

Ghalhekk il-Qorti qed tilqa' l-aggravju tal-appellant, peress illi dan l-aggravju jirrigwarda punt ta' ligi li t-Tribunal applika b'mod zbaljat.

It-tieni aggravju

Dan l-aggravju mhux sollevabbli quddiem din il-Qorti billi kwistjonijiet simili ghandhom jitressqu fis-sede idonea ghal dan l-iskop. Ghalkemm hu dmir ta' kulhadd li jittiehdu in konsiderazzjoni d-drittijiet tal-bniedem pero dan irid isir fil-parametri tal-ligijiet li qed jigu applikati u f'dawn il-proceduri dik hi l-unika konsiderazzjoni li tista' ssir ghal dan l-aggravju. Jekk appellant jivvanta ksur tad-drittijiet, irid jiehu l-passi opportuni fis-sede appozita li tisma' dawn il-lanjanzi.

Ghalhekk dan l-aggravju kif impostat qed jigi michud.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tilqa' l-ewwel aggravju tal-appellant, thassar u tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni fl-ismijiet premessi tal-31 ta' Lulju 2012 u tibghat lura l-atti quddiem it-Tribunal ta' Revizjoni tal-Ambjent u l-lppjanar biex il-kwistjoni tigi mistharrga mill-gdid a bazi ta' dak deciz. L-ispejjez jithallsu mill-Awtorita.

< Sentenza Finali >

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