



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta tat-2 ta' Mejju, 2013

Appell Civili Numru. 67/2011

Dr. Frank Vella Bardon

VS

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Dr. Frank Vella Bardon tal-15 ta' Dicembru 2011 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tad-29 ta' Novembru 2011 li laqghet l-appell ta' Dr Frank Vella Bardon in konnessjoni mal-applikazzjoni PA 3597/09 pero imponiet tlett kondizzjonijiet, u l-istess appellant qed jappella biss mill-ewwel kondizzjoni imposta;

Rat ir-risposta tal-Awtorita' li ssottmettiet li tigi konfirmata d-decizjoni tat-Tribunal;

Rat l-atti u semghet lid-difensuri partijiet;

Rat id-decizjoni tat-Tribunal li tghid hekk:
Ikkunsidra:

B'applikazzjoni tas-7 ta' Awwissu 2009 - full development permission PA 3597/09, fis-sit 'Aquarius', Triq Peter Paul Rubens, Attard, l-appellant talab: "To erect garage in side curtilage and carry out internal alterations at semi-basement level."

L-applikazzjoni giet michuda b'rifjut tat-22 ta' Gunju 2010 ghar-ragunijiet segwenti:

"1. The proposal cannot be considered further unless the following illegal development is first sanctioned or removed and this in terms of policy Circulars 2/96 and 2/98. The illegal development consists of the excess in the number of pupils attending the kindergarten/child day care facility than that permitted by condition no. 2 of PA 3796/01.

2. The number of students attending the kindergarten/child day care facility in excess to that permitted by PA 3796/01 is not acceptable in a residential priority area according to policy CG08 of the Central Malta Local Plan. This increase has a deleterious impact on the amenity of the area and of existing adjoining uses by virtue of noise, additional traffic generation and operating times. It therefore constitutes bad neighbour development and so conflicts with Structure Plan policy BEN 1 which seeks to protect the amenity of existing uses.

3. The proposed extension is not permissible as it will increase the educational capacity on site. This runs counter to CMLP policy CG08 and Part 4 of the Child Day Care Facilities Supplementary Guidance Document (2006) because such facilities are not allowed in Residential Priority Areas as they have a deleterious impact on the amenity of the area and of existing adjoining uses by virtue of noise, additional traffic generation and operating times. It therefore constitutes

bad neighbour development and so conflicts with Structure Plan policy BEN 1 which seeks to protect the amenity of existing uses.

4. The entrance of the proposed garage in the side curtilage is 5m wide and so it runs counter to policy 6.8 of the DC2007.

Fl-appell tieghu l-perit Fenech Vella ghall-appellant ghamel is-sottomissjonijiet segwenti:

1. Fis-semi basement ta' detached villa, li tokkupa 25% mit-total ta' 1550m², isiru zewg attivitajiet destinti ta' Kindergarten u Child Day Care Centre. Din l-attivitá hi awtorizzata bil-permess PA 3138/93 emended bil-permess PA 3796/01. B'din l-applikazzjoni qed issir talba ghal tibdiliet intemi, fosthom it-tkabbir ta' wahda mill-Klassijiet bl'10m², u bini ta' garaxx fis-side garden li jesa 4 karozzi.

2. L-ewwel zewg motivazzjonijiet tar-rifjut hum a relatati man-numru ta' tfal li jistghu jattendu, kwistjoni li effettivamnet tigi determinata mid-Dipartiment tal-Edukazzjoni. Iz-zewg ragunijiet l-ohra huma tant marginali, li ma kienux jiggustifikaw ir-rifjut tal-applikazzjoni.

Dwar l-estenzjoni tal-karma mitluba l-Perit iddikjara s-segwenti:

"Ir-raguni No. 3 titratta fuq estenzjoni ta' 10m² kwadri ma' klassi wahda ghaliex din fiha qies relattivament zghir ghal l-istandards modemi u allura ghandha tkun desiderabbli bhala principju. Barra minn hekk, din l-estenzjoni ser issir taht loggja ezistenti li ddur mal-villa u, ghalhekk, anqas biss izzid mal-footprint user isservi biex kull student ikollu dawk l-ispazi personali rikjesti mis-sistemi edukattivi, modemi. Kontriha inkiteb panegirku ta' 8 linji li tindika l-possibilita ta' apokalissi, mentri din twassal biss ghal miljorament, bla intensifikazzjoni. (Motto tal-MEPA?) Fil-fatt, din setghet saret liberalment b'DNO taht il-klassi 1.2(iii) "Extension to non residential buildings".

Dwar l-garaxx, partikolarment l-wisa' tal-bieb tieghu kkummenta kif gej:

"Ir-raguni No. 4 hi kaz simili. Dan jirrigwarda biss il-wisa tal-bieb ta' garaxx li, fih innifsu, gie accettat. Fil-Policy DC6.8 tad-DCG2007 jigi indikat li wiesghat ta' aktar minn 4.1m huma possibli taht certi kundizzjonijiet izda, bla ma indenja ruhu li jispjega ghaliex dan ma hux accettabbli, id-Direttorat hares biss lejn il-qies 'Standard' u faqqa refusal. Anqas biss ma ipprova jwiezen il-vantagg miksub li kien ser jigi akkwistat bil-bieb wiesgha u cjoe li setghu b'hekk, joqghodu 4 karozzi. Kaz veru, kif jghidu bl-ingliz 'taking the wood for the trees'."

Dwar in-numru tal-aljevi ssottometta kif gej:

"L-ewwelnett hemm fuq il-post zewg attivitajiet ghaddejjin kontemporanji, dawk ta' Kindergarten u ta' Day Care Centre. Il-limitu tat-tfal f'kull wahda minn dawn l-attivitajiet tigi stabbilita mid-Dipartiment tal-Politika Socjali u hi bbazata fuq diversi fatturi li ma ghandhomx x'jaqsmu ma' lppjanar, izda fuq kwalita ta' post, kobor, facilitajiet, kompetenza u numru ta' 'staff' etc. Paragun simili huma il-'Classes' ta' lukandi u stabilimenti ta' 'catering' fejn hi l-MTA li tistabilixxi kemm jistghu joqghodu nies fil-qies ta' kmamar li ghanha lukanda jew ta' mwejjed f'restaurant. Simili wkoll huma licenzji ta' Trading jew tal-pulizija bhal ta' 'garages self drive', fejn ghandhom regolament kif jitqies kemm jistghu jidhlu karozzi go garaxx ghal iskop ta' licenzja u li ma jaqbel assolutament xejn ma' dawk tal-MEPA.

Tant hu hekk li l-Bord tad-DCC kien approva il-permess PA 3796/01 fis-26 ta' Settembru 2003, applikazzjoni ghal ziediet go St. Cecilia Day Care Centre bil-kundizzjoni No. 2 titkellem fuq '30', u kienet semplicement ittra mill-Ministeru ta' Politika Socjali datata 5 ta' Novembru 2003 li qanqlet lill-MEPA tikkorregi b'semplici ittra tat-18 ta' Dicembru 2003, minghajr ma ittellghet ghal laqgha tal-Bord, il-kundizzjoni No. 2 biex taqra '50'.

Irid jigi hawn ukoll enfasizzat li, ghal argumenti tieghu, d-Direttorat qed jikkwota "The Child Day Care Facilities Policy" meta din ghadha biss fi stadju 'Draft' u, allura inapplikabbli, u meta din titratta biss aspett wiehed ta' l-attivitá li hemm fuq dan is-sit, cjoé, thalli barra kompletament il-Kindergarten. F'dan il-kaz, ghandha tigi uzata bhala bazi il-Kindergarten Policy 1994 li tispecifika car daqs il-kristall (Para. 2) li l-ahjar post ghal attivita bhal din hi go villa, possibilment 'detached' u li hu anke possibli li jkollok 'child populations of more than 50'."

Fir-rapport taghha, l-Awtorita 'inter alia' kkummentat kif gej:

"5.2.1 A careful reading of the DPAR indicate that unlike what has been asserted by the appellant all the arguments, made by the appellant in the appeal, were actually considered and assessed in detail by the Directorate.

5.2.2 The issue of excess number of pupils on site
The Directorate for Quality and Standards in Education informed MEPA that during an unannounced visit conducted by them and the Department of Social Welfare Standards they found a total of 53 students on the premises. Therefore the existing kindergarten/child day care facility is infringing condition no. 2 of PA 3796/01. In view of this, during the processing of the application the architect and applicant were asked to submit a copy of the school's register to verify exactly the number of pupils on site. A copy of a database of 38 students attending the kindergarten was subsequently submitted. However no list of children attending the child day care centre was submitted. Hence the total number of pupils on site could not be verified by MEPA. It is pertinent to note that the Assistant Director (Non State Schools) within the Ministry of Education informed MEPA that he also asked for such information, which data was never submitted.

The appellant is missing the most important aspect of the refusal - i.e. more pupils attend the premises than permitted by condition 2 of PA 3796/01 and that makes

the excess number of pupils illegal. This condition stated that no more than 50 pupils are allowed on site. The Ministry of Education confirmed that there are at least 53 pupils.

Unlike what is claimed by the appellant, the issue of the number of pupils on site and the size of a particular educational operation is a planning concern for the following reasons:

- (i) a specific condition in PA 3796/01 has imposed regulating the maximum number of pupils on site (this on its own makes it a planning issue);
- (ii) an education operation has various impact on the surroundings; thus it is obvious that the size of such educational complex has a planning bearing because the bigger its impact.

Since this type of activity is not permitted anymore in villa developments, the issue of having more pupils on site is of direct interest to the holistic planning and the safeguarding of the amenities of the surroundings. Therefore in view that the excess number of pupils on site is illegal because it is more than that permitted by PA 3796/01, no more development on site is permitted until this is regularised in accordance to the provisions in PA Circular 2/96 and 2/98. The appellant did not even try to sanction this excess.

5.2.3 Proposed Classroom Extension

The proposed extension (circa 10sq.m) of the existing educational facilities at the back of the site is not acceptable since this will increase the educational capacity on site. This runs counter to CMLP policy CG08 because it does not permit Class 8 uses (education oriented) in Residential Priority Areas. Similarly Part 4 of the Child Day Care Facilities Supplementary Guidance Document (2006) also makes it clear that child day care facilities are not permissible in Residential Priority Areas.

The Directorate is aware that the policy document that deals with kindergartens (Policy Guidance for Kindergartens/Day Nurseries - 1994) actually permitted

such activities in villa areas. But as explained in paragraph 5.2.3 of this report, the part of the policy document dealing with the location of kindergartens was first superseded by the enactment of policy 15.3 (Commercial development in Villa/Bungalow Areas) of the DC2000 and subsequently with the Central Malta Local Plan (2006).

Thus the proposal generates a negative impact on the neighbouring properties by virtue of the increase of a use that is no longer permissible in the area and so it is not in line with Structure Plan policy BEN1. The existence of a legal education setup on site is not justification enough to permit its extension when such developments are no longer permitted in villa areas.

5.2.4 Proposed Garage in the Side Curtilage

No reference is made to whether the garage is to service the kindergarten/child day care centre (Class 8 Use) at the semi-basement or the overlying residence (Class 1 Use). However due to the existing commitment on site for the kindergarten/child day care centre (approved by way of PA3138/93 and PA3796/01) the proposed garage is acceptable in terms of use because at most it will function as an ancillary facility to the existing educational setup rather than enhance its educational capacity. Furthermore, the garage will alleviate the parking problem on site.

However this garage is proposed to be accessed from an entrance which is 5m wide (and not 4.1m as claimed by the appellant). Therefore it is not in line with policy 6.8 of the DC2007 which limits such garages to an entrance not exceeding 3.4m. This means that the proposed garage is even wider than 4.1m which is the maximum permitted by policy 6.8 of the DC2007 that is only granted in exceptional circumstances.

5.2.5 The issue of the Kindergarten Supplementary Guidance (1994)

It is not correct for the appellant to state that the DPAR makes reference only to the policy document regarding

child day care facilities. A closer reading of the report clearly shows that the Kindergarten Supplementary Guidance (1994) was given its due importance but in terms of zoning it was first superseded by the enactment of policy 15.3 (Commercial development in Villa/Bungalow Areas) of the DC2000 and subsequently with the Central Malta Local Plan (2006) whose policy CG08 clearly states that only residences are permitted in villa areas.

The paragraph dealing with car parking makes ample reference to the Kindergarten Supplementary Guidance and actually distinguish between the two activities (Kindergarten and Child Day Care centre) when it assess the car parking needs on site. Had the Directorate interpreted only the Kindergarten Supplementary Guidance (as the appellant wants), the car parking requirements on site would have been much higher since its parking standards are more stringent and a UIF for 3 cars would have been requested as well in case of approval."

Il-perit Anthony Fenech Vella ghall-appellanti, fin-nota tieghu pprezentata fit-3 ta' Marzu 2011, ddikjara:

"We have never asked for an increase (in) the number of children."

Hu ghamel referenza ghall-Policy and Design Guidance Policy 6.8 li tippermetti, f'certi kazijiet mhux Urban Conservation Areas li l-fetha fil-garage tkun sa 4.1 metri, partikolarment meta din tkun l-access, ghall-numru ta' vetturi, billi zewg karoZZi jkunu jsitghu jidhlu fl-istess hin.

Dwar l-estenzjoni tal-kamra mitluba, l-Perit issottometta li din hi minima, u hi necessarja propju biex tkun konformi mal-istandards rikjest mill-Ministeru tal-Edukazzjoni.

Il-perit iddikjara li c-Child Day Care Facilities Suplimentary Guidance Document (2006) ma ghandhiex l-approvazzjoni tal-Ministru, kif ikkonfermat mid-Dokumenf ipprezentat fis-seduta tat-3 ta' Frar 2011, ghalhekk mhijiex applikabbli; mentri s-Policy applikabbli - Policy Guidance

for Kindergartens/Day Nurseries (1994) tindika bhala s-sit idejali ghal din l-attivit  - a villa site.

Dwar t-traffiku fil-lokalita l-Perit irrileva li l-inkonvenjent ghal girien jista' jezisti biss fil-hin li l-genituri jwasslu lit-tfal fil-gholdu, u meta jmorru jigbruhom. Fil-hinijiet l-oħra tal-gurnata billi t-triq hi wiesa, u hemm cirka 37 postijiet għall-parkegg - ma jinholoqx inkonvenjent ta' traffiku. In oltre l-garaxx propost, li jesa erba' karożzi jimmitiga l-problema tat-traffiku.

Ir-residenti pprezentaw in-nota tagħhom fis-16 ta' Mejju 2011; pero din kienet biss nota li magħha gew annessi ittri precedenti - cjo  ittra tas-7 ta' Novembru 2009 lill-Complaints Office, u ittra tal-Avukat Dottor Carlo Bisazza tat-18 ta' Frar 2002

L-oggezzjoni tar-residenti hi fis-sens li t-traffiku generat rninn din l-attivit  hu ta' inkonvenjent għalihom, u għalhekk jopponu għall-kwalunkwe zieda fin-numru tal-alljevi.

Ikkunsidra ulterjornent:

Il-proposta prezenti tikkonsisti bazikarnent f'zewg talbiet - wahda biex kamra ta' 12m² tizdied b'10m² għal total ta' 22m² - u l-oħra li jinbena garaxx fis-side curtilage, li jesa 4 vetturi. Mhi qed issir l-ebda talba biex jizdied n-numru tat-tfal li jattendu i-kindergarten u d-Day Care facility.

L-ewwel motivazzjoni tar-rifjut tirreferi għal-Cirkolari 2/96 u 2/98, billi meta saret 'inspection' għall-għarrieda rninn ufficjali tal-Ministeru ta' l-Edukazzjoni - kien hemm b'kollox 53 tifel u tifla; Mentri skond l-perrness PA 3796/01 kondizzjonijiet nurnru 2 - originarjarnent gie stabbilit massimu ta' 30, li b'ittra tat-18 ta' Dicembru 2003, il-kondizzjoni giet emendata għal mhux aktar minn 50 tifel u tifla "on the whole premisses"

Dan iffisser li t-total imsemmi jirreferi kemm għat-tfal li jattendu l-kindergarten kif ukoll dawk li jmorru d-Day Care Centre.

Minn Red 28 fil-file PA 3597/08 jirrizulta li l-appellant ta' d-dettalji minnu mitluba dwar n-nurnru ta' tfal li jattendu i-Kindergarten. Hemm tlett klassijiet - wahda bit-13 tifel u tifla, ohra bi tnax (12) u ohra bi tlettax (13) b'kollox 38. Dan iffisser li tfal ghal Day Care Centre hu limitat ghall-ammont ta' 12.

Jigi rilevat f'dan il-kuntest, li fil-waqt li fil-kaz tal-Kindergarten, billi t-tfal huma mqassma fi klassijiet wiehed jista' facilment jikkontrolla u jivverifika t-total - fil-kaz ta' Day Care Centre - s-servizz hu propjament intiz biex jghin genituri li jahdmu, jew li f'xi okkazzjoni partikolari, jkollhom bzonn ihallu t-tifel, tifla, jew tfal temporanjament fil-facilita. In-numru ta' dawn it-tfal ghalhekk jvarja skond id-domanda u l-htigijiet tal-genituri.

Fir-rapport ta' Victor Agius, Assistent Direttur, Non Stante Schools Section dwar l-ispezzjoni tal-10 ta' Novembru 2009 Red 28 fil-file PA 3597/09 - irrizulta li t-tfal akkommodati fic-Childcare Centre dak in-nhar kien 15.

In vista tal-fatt li t-total tat-tfal li jattendu l-klassijiet tal-Kindergarten, fi tlett klassijiet kienu 38; u billi n-numru tat-tfal fid-Day Care Centre jista' jvarja ghal ragunijiet li certament m'humix fil-kontroll tal-applikant - mhux il-kaz li l-proposta tigi michuda ghas-sempliċi raguni li f'gurnata partikolari inzerta kien hemm 3 itfal aktar mit-total awtorizzat.

Il-paragrafu 3 tar-rifjut jghid "The proposed extension is not permissible as it will increase the educational capacity on site". Din il-motivazzjoni mhix korretta ghaliex l-estenzjoni mitluba hi intiza biex t-tfal li jattendu i-kindergarten ikunu akkommodati ahjar, fi spazju akbar, del resto kif rikjest mid-Dipartiment tal-Edukazzjoni. Irrizulta li l-proposta rnhiq qed issir biex jizdiedu t-tfal li jattendu i-Kindergarten u d-Day Care Centre, izda biex dawn ikunu akkommodati ahjar.

Dwar il-garage propost, l-Awtorita fil-principju ma toggezzjonax - toggezzjona ghall- wisa' tal-entrata proposta ta' 5 metri.

Skond il-Policy and Design Guidance 2007 - Policy 6.8 l-wisa tal-entrata tal-garaxx ghandha tkun 3.4 metri - pero f'cirkostanzi partikolari hi accettabbli wisa' ta' 4.1 metri. Fil-kaz in ezami dan il-wisa' hu rakkommandabbli billi jippermetti li zewg vetturi jidhlu fl-istess hin fil-garaxx; u billi dan jesa 4 vetturi jnaqqas mill-on street parking, cirkostanza li timitiga l-effett negattiv tat-traffiku fil-lokalita.

Dwar l-ilment tar-residenti, jixraq li jgi rilevbat li l-ilment taghhom hu relatat maz-zieda ta' traffiku generat min din l-attivita, u l-fatt li okkazjonalment isir parking (anke jekk mhux ghall-hinijiet twal) quddiem il-garaxxijiet u d-drive in's taghhom.

Billi l-attivita hi diga awtorizzata bil-permess, u billi l-applikant mhux qed jitlob li jkun jista' jakkomoda aktar tfal, minn dak li ghandu fil-prezent, dan l-inkonvenjent mhux ser jizdied; anzi, peress li l-proposta tinkludi garaxx ghall-parkegg ghall-erba' vetturi, ser jitnaqqas 4 karozz li solitament kienu jigu ipparkjati fit-triq, u possibilment kienu jikkrejaw inkonvenjent ghar-residenti.

Fic-cirkostanzi ghalhekk ma jirrizultax li l-proposta prezenti ghandha taccetwa l-inkonvenjent ghar-residenti tal-lokalita, u ghalhekk tista tigi kkonsidrata favorevolment purche b'zieda tal-kundizzjonijiet segwenti.

It-Tribunal ghalhekk qed jiddisponi minn dan l-Appell billi jilqa' l-istess, jirrevoka r-rifjut tat-22 ta' Gunju 2010 ghall-applikazzjoni PA 3597/09, u jordna li fi zmien xahar l-appellant jinghata l-permess kif minnu mitlub b'zieda tas-segwenti kondizzjonijiet, ma dawk normalment imposti f'permessi simili:

1. Il-kundizzjoni tal-permess precedenti PA 3796/01 kif emendata bl-ittra tal-Awtorita tat-18 ta' Dicembru 2003 - li n-numru totali ta' tfal ikun ta' 50 - hi kundizzjoni f'dan il-permess.

2. Il-wisa' tal-bieb tal-garaxx propost ghandha tigi ridotta minn 5 metri ghal 4.1 metri skond il-Policy 6.8 tal-Policy & Design Guidance 2007.

3. Fil-pjanta anessa mal-applikazzjoni ghandu jigi indikat liema kmamar ser ikunu klassijiet ghall-Kindergarten - u liema kmamar ser jigu utilizzati ghal Child Care Facility.

Ikkunsidrat

L-aggravji tal-appellant huma tnejn:

1. Li l-ewwel kondizzjoni imposta ghal hrug tal-permess cioe li n-numru ta' tfal ikun limitat ghal 50 hi ultra vires il-poteri tat-Tribunal ghax tali decizjoni ma tispettax lit-Tribunal izda lid-Direttorat u l-Ministru tal-Edukazzjoni ai termini tal-Kap. 327 art. 9, 10 u 20 li ghandu hu biss il-poter li jaghti licenzji ghal skejjel u kull kondizzjoni relatata inkluz l-ammont ta' studenti kif fil-fatt kien sehh originarjament b'ittra tad-Dipartiment tal-Edukazzjoni;
2. Li l-istess kondizzjoni hi wkoll ultra petita dak mitlub billi l-fond kien gia kopert bil-permessi u licenzji necessarij biex jintuza bhala skola (ara permess 3796/01) u l-applikazzjoni odjerna kienet tirrigwarda biss "to erect garace in curtilage and carry out internal alterations at semi basement level". Qatt ma ntalbet xi zieda ta' studenti f'din l-applikazzjoni peress li kieku dan kien il-kaz, l-Awtorita mhix l-enti kompetenti ghal tali premiss.

Bla dubju din il-Qorti tqis li dawn huma kwistjonijiet ta' indoli legali li jridu jigu indirizzati mill-Qorti, u tqajmu fil-kors tat-trattazzjoni tal-applikazzjoni quddiem it-Tribunal.

L-ewwel aggravju

It-tezi tal-appellant dwar dan l-aggravju hu illi la darba l-applikazzjoni tirreferi biss ghal estensjoni ta' bini gia ezistenti minghajr ma jinbidel xejn mill-footprint, kwistjonijiet ohra, cioe kemm jigu akkomodati tfal f'din l-iskola lanqas hi fil-kompetenza tal-Awtorita ghax tirrigwarda permess differenti cioe wiehed li jidhol fil-poteri

u mansjonijiet tal-Ministeru tal-Edukazzjoni u kwindi t-Tribunal mar oltre l-poteri li taghtih il-ligi meta ddecieda u impona kondizzjonijiet simili. Din il-Qorti ma taqbilx. Fl-ewwel lok it-Tribunal ma imponiex kondizzjoni gdida. Din il-kondizzjoni kienet gia ezistenti fil-permess tal-Awtorita PA 3796/01 riferibbilment ghall-istess fond, cioe villa uzata bhala kindergarten u day care centre. Meta gie biex iqis l-applikazzjoni odjerna koncernanti dejjem l-istess fond uzat bl-istess mod kif originarjament premess, it-Tribunal ghandu l-obbligu li jidhol fi kwistjonijiet ta' planning kif fil-fatt jidher li ghamel meta evalwa s-sottomissjonijiet tal-partijiet rigward il-policies rilevanti illum, u tenut kont li mhux qed tintalab zieda fin-numru ta' tfal li jistghu jattendu fl-imsemmija kindergarten u day care facility. Din il-parti tad-decizjoni taghti x'tifhem illi l-kwistjoni setghet tiehu xejra differenti fuq kwistjonijiet ta' planning li kieku l-intenzjoni wara l-proposti alterazzjonijiet kienet iz-zieda ta' tfal. Fil-fatt it-Tribunal izid illi l-motivazzjoni taz-zieda fl-istudenti kif allegat mill-Awtorita ma kinitx korretta ghax l-iskop wara t-talba ma kinitx iz-zieda izda l-akkomodazzjoni ahjar tal-istess ammont ta' studenti kif fil-fatt kien gia permess mill-Awtorita fuq ir-rakkomandazzjoni espressa tas-Segretarjat fil-Ministeru ghall-Politika Socjali kif kien dak iz-zmien fl-ittra tieghu tal-5 ta' Novembru 2003.

It-Tribunal ma imponiex hu kondizzjoni dwar l-ammont ta' tfal li setghu jattendu izda biss ikkonferma kondizzjoni gia ezistenti u uzata bhala bazi biex fuq kwistjonijiet ta' planning seta' jinhareg il-permess kif mitlub bla xkiel.

Kwindi din il-kondizzjoni ma kinitx xi wahda gdida jew oltre l-poteri tat-Tribunal li ma impona xejn gdid li ma kienx kopert b'permess specifiku u li iddahhlet bhala rikonferma ta' dak gia ezistenzi biex jigi iggustifikat il-hrug tal-permess ghal estensjoni.

It-tieni aggravju

Ghakemm relatat mal-ewwel aggravju pero mhux identiku ghalih, l-appellant qed jallega illi t-Tribunal mhux ma kellux jedd li jimponi tali kondizzjoni izda li ma kienx mitlub

jidhol fil-kwistjoni billi ma kinitx parti mit-talba. Hawn ukoll il-Qorti ma taqbilx ghaliex it-talba ghal estensjoni fil-bini ma tistax tittiehed qisu ma jezisti xejn. Din l-applikazzjoni qed testendi uzu ta' spazju ghal skop specifiku gia munit b'permess tant hu hekk illi l-appell interpost mill-appellant quddiem it-Tribunal fil-15 ta' Lulju 2010 ittratta bhala aggravju l-kwistjoni tal-gurisdizzjoni cioe l-impozizzjoni tal-kondizzjoni bhala wahda ultra vires il-poteri tieghu izda fil-fatt fit-trattazzjoni quddiem it-Tribunal kien punt dibattut anki mill-appellant li l-iskop wara l-estenzjoni fil-bini ma kienx iz-zieda tal-istudenti. Ghalhekk it-Tribunal ma ddecidiex kwistjoni mhix imqajma jew mhix marbuta intrinsikament mal-valutazzjoni jekk fuq kwistjonijiet ta' planning, ghandux jigi rifjutat il-permess speċjalment meta kien qed jigi ttrattat rifjut mahrug mill-Awtorita ghal hrug ta' dan il-permess. Il-Qorti tqis li t-Tribunal ghamel sew li tratta l-kwistjoni b'modolistiku tenut kont li kien hemm permess originali ghal skop specifiku li dwaru, ghalkemm b'mod indirett, kien qed jintalab alterazzjoni konsistenti f'zidiet ta' bini li seta' jinfluixxi fuq policies vigenti u li in fin dei conti dak li ghamel it-Tribunal, wara trattazzjoni ampja mill-partijiet, wasal biex bbilancja d-drittijiet tas-socjeta ma' dak tal-applikant. Din ma kinitx kwistjoni li tqajmet mit-Tribunal izda mill-Awtorita li ghandha l-obbligu tqajjem il-kwistjonijiet kollha rilevanti ghal vertenza u l-opportunita shiha li nghatat lill-appellant li jressaq l-argumenti kontra dak sottomess kif fil-fatt sehh.

Decide

Ghalhekk il-Qorti qed tichad l-appell ta' Dr. Frank Vella Borda u tikkonferma id-decizjoni tat-Tribunal ta' Revizjoni dwar l-Ambjent u l-Ippjanar tad-29 ta' Novembru 2011. L-ispejjez jithallsu mill-appellant.

< Sentenza Finali >

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