QORTI TAL-APPELL

IMHALLFIN

S.T.O. PRIM IMHALLEF SILVIO CAMILLERI
ONOR. IMHALLEF TONIO MALLIA
ONOR. IMHALLEF JOSEPH AZZOPARDI

Seduta ta' nhar il-Gimgha 11 ta' Marzu 2016

Numru 5

Citazzjoni Numru 343/15

Perit William Lewis

v.

(1) Kunsill Lokali Qrendi
(2) Perit Anthony C Bezzina f'ismu propju u ghan-nom ta' ACB Architects
(3) Direttur Generali (Kuntratti) ghal kull interess li jista' jkollu

Dan hu appell imressaq fid-29 ta' Ottubru, 2015, mill-perit William Lewis wara decizjoni datata 13 ta' Ottubru 2015, moghtija mill-Bord ta' Revizjoni dwar Kuntratti Pubblici (minn hawn 'l quddiem imsejjah "il-Bord") fil-kaz referenza QLC-SACE 49/15.

Dan il-kaz hu marbut mas-sejha ghall-offerti li hareg il-Kunsill Lokali Qrendi "*for the service of an architect and civil engineer*". Ghal din is-sejha applikaw xi periti u l-kuntratt gie rrakkomandat li jinghata lill-perit Anthony Bezzina ghan-nom ta' ACB Architects. Dwar l-offerta tal-perit Lewis inghad semplicement illi "*it has not been accepted*". L-imsemmi perit Lewis, b'ittra tad-9 ta' Gunju, 2015, ipprezentata lis-segretarju ezekuttiv tal-Kunsill Lokali Qrendi, ressaq appell "*as per clause 12, Part 4 of SL 363.03 Local Councils (Tendering) Regualtions*". Is-segretarju ezekuttiv ghadda l-appell lill-imsemmi Bord li b'decizjoni tat-13 ta' Ottubru, 2015, cahad l-appell ghax qies li ma kellux kompetenza jisma' l-kaz. Id-decizjoni tal-Bord hi s-segwenti:

"The Public Contracts Review Board,

- "Having established that the estimated value of the tender in caption is five thousand four hundred and eighty one euro eighty cents (€5,481·80) exclusive of VAT;

- "Having noted Regualtion 21.(1) of the Public Contracts Procurement Regulations, S.L.174.04, which states that "*Where the estimated value of the public contract exceeds twelve thousand euro (€12,000) and is issued by an authority listed in Schedule 1, any tenderer or candidate concerned shall have a right to make a compaint to the Review in accordance with this regulations.";*

- "Having considered that the estimated value of the tender is less than €12,000;

"Resolves that the objection is not according to Regulations since the right of recourse to review is restricted to tenders exceeding the €12,000 threshold and that therefore the Board cannot consider the objection any further.

> In the circumsances, this Board recommends that the deposit paid by the appellant, when filing the objection, be reimbursed."

Il-perit Lewis appella mid-decizjoni ghax isostni li ma kienx hu li ressaq l-appell tieghu quddiem il-Bord, u ghal zball tas-segretarju ezekuttiv m'ghandux ibati l-konsegwenzi hu.

Jirrizulta bhala fatt li peress li l-kuntratt in kwistjoni kellu valur ta' taht it-€12,000, l-appell mid-decizjoni tal-Kunsill kellu jitressaq mhux quddiem il-Bord, izda quddiem il-Bord tal-Appelli mwaqqaf mill-Ministru taht il-legislazzjoni susidjarja relattiva. L-appellant perit Lewis ghamel dak li kellu jaghmel bil-ligi billi, ai termini tar-regolament 12 tal-ligi sussidjarjrja, ressaq l-appell "*lis-segretarju ta' dak il-Kunsill Lokali*", u kien dmir ta' dan li jidderigi l-appell lill-bord kompetenti skont il-provvedimenti tal-istess ligi sussidjarja. Mhux kompitu ta' min irid jappella biex jara li s-segretarju tal-Kunsill iwettaq dmiru kif suppost, izda hu dmir tal-istess segretarju li jsegwi l-ligi u jidderigi l-appell quddiem il-bord kompetenti. L-appellant Lewis ghamel dak li kien mistenni minnu skont il-ligi billi ressaq l-appell, bid-depozitu relattiv, lis-segretarju tal-Kunsill Lokali Qrendi, u ghall-izball ta' dan tal-ahhar ma ghandux ibati l-appellant.

Is-sentenza li ta l-Bord fit-13 ta' Ottubru, 2015, ma tistax, pero`, tithassar ghax hi tajba fid-decizjoni taghha. Darba li l-valur tal-kuntratt kien taht it-€12,000 iddecieda sew li ma kellux kompetenza jiddeciedi fuq l-appell kif imressaq quddiemu. Darba issa li l-appell kif imressaq quddiem il-

Bord gie dikjarat irritu u null fuq bazi ta' nuqqas ta' kompetenza, is-segretarju tal-Kunsill Lokali Qrendi ghandu jirrimedja ghall-izball tieghu billi jibghat l-appell tal-perit William Lewis lill-Bord tal-Appelli kompetenti, biex l-appell jigi deciz kif trid il-ligi. L-appell tal-perit Lewis jidher li gie ipprezentat lis-segretarju tal-Kunsill fit-terminu stabbilit mil-ligi, u li jonqos issa huwa li dan iwettaq dmiru u jghaddi l-istess lill-bord vestit bil-ligi bil-kompetenza biex jisma' dak l-appell.

Ghaldaqstant, ghar-ragunijiet premessi, tiddisponi mill-appell tal-perit William Lewis billi tilqa' l-istess in parte, u filwaqt li tikkonferma d-decizjoni li ha l-Bord ta' Revizjoni dwar Kuntratti Pubblici fit-13 ta' Ottubru, 2015, tordna lill-appellat Kunsill Lokali Qrendi sabiex fi zmien gimgha millum jghaddi l-appell li ressaqlu l-perit Lewis bl-ittra tad-9 ta' Gunju, 2015, lill-Bord tal-Appelli mahtur skont il-ligi ghall-iskop indikat.

L-ispejjez marbuta ma' dan l-appell ghandhom jithallsu kollha mill-appellat Kunsill Lokali Qrendi – u dan peress li kien zball tas-segretarju tieghu li wassal ghall-vertenza.

Silvio Camilleri Prim Imhallef	Tonio Mallia Imhallef	Joseph Azzopardi Imhallef

Deputat Registratur
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