



**QORTI TA' L-APPELL**

**ONOR. IMHALLEF  
MARK CHETCUTI**

Seduta tat-2 ta' Mejju, 2013

Appell Civili Numru. 162/2012

**John Cassar  
vs**

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

**Il-Qorti,**

Rat ir-rikors tal-appell ta' John Cassar tas-17 ta' Ottubru 2012 kontra d-decisjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-27 ta' Settembru 2012 li rrifjuta l-applikazzjoni PA 3878/07;

Rat ir-risposta tal-Awtorita li sottomettiet illi l-appell ghandu jigi michud u d-decizjoni tat-Tribunal tigi konfermata;

Rat l-atti kollha u semghet id-difensuri tal-partijiet;

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

A. Il-Kummissjoni għall-Kontroll ta' l-Izvilupp, fil-15 t'April 2010, irrifjutat l-applikazzjoni outline development permission PA 3878/07 "Site at Tas-Salvatur, 110 Siggiewi: Outline development for the rehabilitation of disused quarry into open storage area."

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

"1. The proposed development is unacceptable as it would have a deleterious impact on the existing adjoining uses and so conflicts with Structure Plan policy BEN 1 which seeks to protect the amenity of existing uses.

2. The development is unacceptable since it is in conflict with part 1 and 2 of the South Malta Local Plan 2006 policy SMCO 08 in view of non-endorsement of proposal by the Malta Resources Authority."

B. In-nota tal-Perit Franco Montesin għall-Appellant, ipprezentata fit-13 ta' Mejju 2010, senjatament il-punti segwenti:

"Policy MIN 13 [...] makes the first reason for refusal irrelevant.

With regards to the second reason [for refusal, i.e.] the objection by [recte of] the [Malta] Resources Authority, no quantitative or scientific reasons for its objection were given and no impact assessment was requested or presented."

C. In-nota risponsiva ta' Mario Scicluna għall-Awtorita, ipprezentata fit-3 ta' Gunju 2010, inter alia l-hames punti segwenti:

"5.1.3 On a primary note, the Authority disagrees that SP Policy MIN 13 justifies the requested development in this appeal since the same Structure Plan policy makes reservations that the reuse of disused quarries could be considered 'subject to satisfactory environmental impacts

including protection of underground water resources'. Hence, this policy does not provide an outright approval of disused quarries to be used for other uses but also includes a proviso that the necessary environmental considerations and especially those relating to the underground resources must first be fully safeguarded against possible negative impacts.

5.1.4 In this case under appeal, although the site is recognized as a disused quarry which could be rehabilitated another use, the requested use as that of 'open storage' inevitably instigates other issues which question the suitability of such a use in a site which is in close proximity to a government (public) borehole. In fact, the South Malta Local Plan has a specific policy in such circumstances, and which deals with Groundwater Resources Protection and Water Quality. In such circumstances, one cannot quote a Structure Plan Policy (which is a generic policy applicable for the entire island) and disregard a specific policy which was approved after much more detailed analyses of specific areas as approved in August 2006.

5.1.5 In this particular case, the Authority makes reference to Policy SMCO 08 which deals in more detail the criteria to be used when assessing applications for the reuse of disused quarries vis-a-vis their proposed new use. In the case under appeal, since this quarry is within the 500m radius from a public (government) borehole, then, all the listed criteria must be first met before one can consider other planning considerations. In fact, when the initial consultations were carried out, the Malta Resource Authority had objected in letter dated 15th July 2008. Other objections were raised by the Strategic Group within MEPA and by the Planning Directorate's Advisory Committee. The latter added that when and if the MRA objections are resolved, the case needs to be forwarded to the EPD for their screening vis-a-vis EIA regulations to ascertain if the requested development would require an EIA. Re this issue, it is to be stated that since no clearance has yet been submitted by MRA up to DCC's decision, now that the case has been forwarded to the

Planning Appeals Board, the PAB has to evaluate all the facts of this case but has also to take into consideration that the EIA screening has not yet been carried out. Hence, being at appeals stage where no further such consultations could take place [...] even if the MRA eventually gives its 'no objection', this can only be considered through a fresh application where all the necessary consultations would be carried out by the Directorate (and not the Planning Appeals Board) as appropriate in applications which would be acceptable in principle and a further full assessment can be carried out by the Directorate. Since this application was not favourably recommended by the Directorate, not all the necessary consultations were carried out at that time as per normal procedures in such cases (ie. with a negative recommendation).

5.1.6 Policy SMCO 08 clearly states that:  
Inner Protection Zone.

Development will only be permitted within 500 metres of public boreholes, underground gallery systems of springs and pumping stations, or dry valleys and do lines that contribute to the natural recharge of aquifers that are tapped for drinking water purposes (Inner Protection Zone) subject to the following criteria:

- i. prior approval of the Water Services Corporation and the Water Directorate of the Malta Resource Authority;
- ii. the development can be connected to the public sewer system. Cess pools or septic tanks will be prohibited;

The above clearly show that in view that the MRA did not submit its 'no objection' and the fact that the WSC had stated (Red 24 in file) that the site cannot be connected to the main sewer and that a cesspit is required, these facts rendered the request to construct an open-storage facility in this disused quarry objectionable.

5.1.7 Furthermore, the Authority disagrees that such open storage facilities cannot be located elsewhere in the island since open storage facilities have specific policies in the local plans as well as a specific policy document "Policy

Guidance - Areas for Open Storage: February 2005" which all set guidelines through which such facilities could be considered in many other sites which do not contain such environmental sensitive restrictions as the one under appeal (and hence, could be approved by the Authority)."

D. In-nota ta' sottomissjonijiet tal-Perit Franco Montesin ghall-Appellant, ipprezentata fit-16 ta' Gunju 2010, precizament il-punti segwenti:

"The reason for refusal is based on the objection by the Mineral Resources Authority on the grounds of ground water contamination. [...] the only objection is that MRA favours the rehabilitation of spent quarries. The effect on the water table of the latter as against the proposed development is highly questionable and is not backed by any scientific evidence. On the other hand our client was involved in considerable expense to carry out a survey and prove that the quarry is exhausted."

E. Ix-xhieda ta' Anthony Rizzo, kap ezekuttiv fi hdan l-Awtorita ta' Malta dwar ir-Rizorsi, prodott mill-Appellanti, moghtija bil-gurament waqt is-Seduta numru 1, mizmuma fil-11 ta' Jannar 2011.

"Qed nirreferi ghall-ittra li baghet l-Awtorita lid-Direttur tal-Ippjanar datata 15 ta' Lulju 2008, fejn din telenka l-oggezzjonijiet li ghandha l-Awtorita. [...]

Jigifieri qed nikkwotaw policy interna li bazikament meta barriera tkun ezawrita trid terga' tigi restawrata. Dik hija l-unika oggezzjoni li kellna pero, mill-ittra li ahna baghtna ahna dejjem nghidu illi l-issue ta' land use ghandha tigi deciza min-naha tal-MEPA, u mhux min-naha ta' l-Awtorita ta' Malta dwar ir-Rizorsi. Fl-ittra taghna stess nghidu cara u tonda illi din hija konsultazzjoni biss [...]

Mistoqsi mit- Tribunal jekk ghalina hux l-istess timlilha erbghin filata as against timliela sittin filata u jekk teknikament taghmilx differenza jien nghid illi, ahna nghidu to return to agricultural use. Dejjem hekk nghidu u dejjem noggezzjonaw meta jkun hemm zvilupp go

barriera. Jiena qed nitratta l-policies interni ta' l-MRA meta nigu biex nevalwaw applikazzjonijiet go barriera.

Mistoqsi mit-Tribunal jekk f'dik l-area in partikolari li qed nitkellmu fuqha [...] ghandhiex xi policies differenti minn tas-soltu, jiena nghid, li ahna dejjem nitkellmu fuq barriera li hija exhausted u ahna ma ikumentajniex fuq the specific site. Din hija water protection zone pero oggezzjoni tad-Dipartiment ta' l-Ilma ma hemmx. Ghax kieku kien hemm oggezzjoni min-naha tad-Direttorat tal-Ilma kienet tkun mitkuba f'din l-ittra."

F. In-nota ta' Marthese Cassar Debono ghall-Awtorita, ipprezentata fl-4 ta' Marzu 2011, fejn maghha giet allegata kopja ta' korrisondenza mibghuta minn Jonathan Heywood, ufficjal fi hdan l-Environmental Protection Directorate (EPD) ta' l-Awtorita. Din l-ittra tlenka tlett punti kif gej:

#### "1. Environmental Impact Assesment (EIA)

Reference is made to Doc 1. Given that the proposed development includes the rehabilitation/afteruse of a quarry into an open storage area, not already covered by an approved landscaping/restoration scheme, and within 200m of a protected site, i.e. L-Ajruport ta' Hal-Luqa Bird Sanctuary as per L.N. 41 of 2003, proposal may qualify for an EIA as per EIA Regulations 2007 (L.N. 114 of 2007) and thus, a Project Description Statement is to be requested. Furthermore, proposal also falls within the remit of the South Malta Local Plan Policy SMA 11, whereby a PDS would need to be submitted for proposals related to the rehabilitation of quarries in Mqabba, Siggiewi, Qrendi and Kirkop.

#### 2. Environmental permitting

The proposal qualifies for an operational permit and therefore, should the proposal be considered favourably applicant should apply for an operational permit with the EPD Environmental Permitting and Industry Unit.

#### 3. Conclusion

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The proposed development qualifies for EIA and for permitting procedures. However, the proposal is also objectionable in principle and a refusal is thus recommended. The requirement of further screening for EIA should not take precedence over the recommended refusal in principle."

G. In-nota ta' sottomissjonijiet tal-Perit Franco Montesin ghall-Appellant, ipprezentata fl-20 ta' Gunju 2011, fejn giet ipprezentata kopja tal-Project Description Statement (PDS) rilevanti ghal-kaz in ezami u in sostenn tal-argumenti mressqa mill-istess Appellant.

H. In-nota ta' sottomissjonijiet ta' Mario Scicluna ghall-Awtorita, ipprezentata fl-1 ta' Frar 2012, precizament il-punti segwenti:

"The Environment and Planning Review Tribunal is hereby being informed that the Environment Planning Directorate has assessed the proposed development vis-a-vis the need for an Environment Impact Assessment (EIA) and has concluded that there is no need for such an EIA for the proposed development.

However, the Malta Environment and Planning Authority still reiterates its original objection on planning grounds in line with the DPA Report red 52, DCC refusal decision red 62 as well as to the Appeals Report red 67 [...]."

J. In-nota ta' sottomissjonijiet ulterjuri tal-Perit Franco Montesin ghall-Appellant, ipprezentata fid-9 ta' Frar 2012, senjatament il-punt segwenti:

"It is quite clear from this communication that through the PDS submitted, which has negated the need for an E.I.A., EPD found that the development is unacceptable in principle. In addition, the report goes through the potential impacts of such development and it found no objection."

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda proposta ghal outline development permission sabiex barriera ezawrita li tinsab fil-limiti tas-Siggiewi tigi riabilitata bhala open storage area. Ir-raguni ghar-rifjut jistrieħu fuq il-fatt li l-proposta ser tkun ta' mpatt negattiv fuq l-ambjent tal-madwar, u peress li ma' gietx approvata mill-Awtorita ta' Malta dwar ir-Rizorsi (MRA), hi in kontravenzjoni tal-policies BEN 1 u SMCO 08 tal-Pjan ta' Struttura u l-Pjan Lokali (SMLP), rispettivament.

L-aggravji ta' l-Appellant huma bbazati fuq il-premessa li i-policy MIN 13 tal-istess Pjan ta' Struttura tippermetti li kemm il-darba jista' jigi ppruvat li l-ground water resources mhumiex ser jigu kkontaminati, allura kwalsiasi tip t'attivitá li ma' tistax titqieghed bnadi ohra tista' tigi permessa gewwa barriera ezawrita. In oltre, jispjega li ghalkemm l-MRA registrat l-opposizzjoni tagħha ghal-proposta de quo, dan għamlitu mingħajr ma sar l-ebda studju jew valutazzjoni xjentifika (i. e. Environmental Impact Assessment - EIA).

L-Awtorita tirribatti l-argumenti mressqa mill-Appellant billi tispjega li i-policy 13 hi tassattiva, in kwantu tagħmila cara li l-hrug ta' permess hu soggett għal valutazzjoni ambjentali - u billi fil-vicin hemm borehole tal-Gvern, l-uzu propost għal open storage jista' jkun ta' detriment għal din ir-rizorsa naturali. Fil-fatt, issir riferenza għall-policy SMCO 8 tal-Pjan Lokali - liema policy giet citata bhala wahda mir-raguni ghar-rifjut - li galadarba proposta bħal din tinsab f'distanza ta' inqas minn hames mitt metru minn bore hole (cjoe fl-inner protection zone), allura jrid jithejja studju apposta. Targumenta li kemm l-iStrategic Group kif ukoll il-Planning Directorate's Advisory Committee fi hdan l-istess Awtorita minn dejjem kienu kontra l-hrug tal-permess - tant li lanqas biss ma saru l-konsultazzjonijiet meħtiega u l-iscreening li normalment hu mpost meta jkun rikjest EIA.

Fl-ahhamett, mix-xhieda tal-kap ezekutti tal-MRA johrog li di principju, l-MRA hi favur li kwalsiasi barriera tigi riabilitata skond ma titlob l-Awtorita. In oltre, jigi rilevat permezz tal-Policy Guidance - Areas for Open Storage, li



L-attività ta' open storage tista titqieghed bhadi ohra, u mhux bilfors gewwa barriera bhal din, li terga tghid tisab f'zona sensittiva. Ghalhekk, l-argument tal-Appellant li skond is-policy MIN 13 kif suespost, open storage fil-barriera in ezami huwa idoneju mal-ambjent naturali tal-madwar, ma jreggix.

Tajjed li jigi osservat li l-attività ta' barriera hi kkunsidrata bhala koncessjoni temporanja sabiex wiehed ikun jista' jahasad rizorsa naturali (bhalma fuq kollox hi l-gebla tal-franka, etc.). Minn tali kunsiderazzjoni ghandu jirrizulta li kemm il-darba din ir-rizorsa tispicca jew ezawrita, allura jkun xieraq li l-gerha fuq l-ambjent naturali tinghalaq ukoll, u li l-barriera tigi riabilitata u ripristinata bhallikieku qatt ma ezistiet. Dan hu prezz zghir; cjoé li persuna li tkun uzufruwiet minn rizorsa tregga lura l-ambjent naturali ghalli kien, u mhux timponi fuqu zvilupp ulterjuri.

Ghalhekk, in vista tal-konsiderazzjonijiet kollha hawn fuq maghmula, u fuq kollox sabiex ikun konformi mal-policies tal-ippjanar vigenti, dan il- Tribunal qed jiddisponi minn dan l-appell billi jichad l-istess u jikkonferma ir-rifjut ghall-PA 3878/07 mahrug mill-Kummissjoni ghall-Kontroll ta' l-Izvilupp, fil-15 t'April 2010.

### **Ilkunsidrat**

L-aggravji tal-appellant fis-succint hu s-segwentu cioé illi t-Tribunal naqas li jikkonsidra policy SMIA11 tal-Pjan lokali ghan-nofsinhar ta' Malta meta din giet dikjarata applikabbli ghal kaz in kwistjoni mill-Ufficjal tal-Environment Protection Directorate Johnathan Heywood b'nota tieghu tal-4 ta' Marzu 2011 u dan fl-isfond tal-argumenti li kienu qed jingiebu mill-partijiet. Mifnlok it-Tribunal strah biss fuq policies generici li jirrizultaw minn Pjan ta' Struttura.

Ghalhekk il-konkluzzjonijiet tat-Tribunal huma mankanti u inkompleti u jikkostitwixxu applikazzjoni hazina tal-ligi billi ma jindirizzawx il-kwistjonijiet kollha determinanti mertu ta' din l-applikazzjoni.

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Tajjeb li qabel xejn f'dan il-kaz partikolari jsir ezami qasir ta' dak li wasal ghad-decizjoni tat-Tribunal.

L-Awtorita irrifjutat li jinhareg permess ghal riabilitazzjoni ta' barriera spenta fuq zewg binarji cioe li tmur kontra Structure Plan Policy BEN1 fejn l-zvilupp ma jinghatax permess jekk ser ikollu impatt negattiv fuq site adjacenti u tmur kontra South Malta Local Plan 2006 Policy SMCO 08 billi ma kienx hemm l-adezzjoni tal-Malta Resources Authority.

L-aggravju tal-appellant fost affarijeit ohra kien illi policy MIN13 tippermetti riużu ta' barriera spenta bhala principju generali soggett ghal environmental impact assessment u protezzjoni ta' ground water resources.

L-Awtorita irribattiet illi din il-policy trid tinqara mal-policy specifika SMCO 08 li titratta fid-dettall il-kriterju biex jigu ezaminati tali zviluppi proposti.

Waqt l-ezami tal-appell quddiem it-Tribunal ix-xhud ghal Malta Resources Authority Anthony Rizzo fis-seduta tal-11 ta' Jannar 2011 qal li ma kellu ebda oggezzjoni mill-Water Resources Authority u illi l-kwistjoni finalment kienet ta' kompetenza tal-MEPA. Hu qal illi bhala internal policy l-Awtorita kienet tal-opinjoni li barrieri ezawriti kellhom jigu restawrati pero 'land use' kienet f'idejn il-MEPA.

Wara din ix-xhieda t-Tribunal ordna li jsir Environment Impact Assessment Screening mid-Direttorat.

B'ittra tat-22 ta' Frar 2011 Jonathan Heywood ghad-Direttorat filwaqt li qal li din it-tip ta' riabilitazzjoni kienet taqa' fl-ambitu tal-policy SMIA 11 u ghalhekk kien jehtieg Project Description Statement mill-appellant pero mbaghad billi fil-principju din il-proposta tal-applikant kienet oggezzjonabbli u ghalhekk kien jimmerita rifjut l-EIA ma kellux jiehu precedenza fuq ir-rifjut rakkomandat.

Tali konkluzjoni u nuqqas tad-Direttorat li jobdi dak li ordna t-Tribunal hu riprensibbli iktar u iktar meta l-appellant

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issenjala n-nuqqas u fil-fratemp esebixxa Project Description Statement dettaljat.

Sfortunatament it-Tribunal ma ha ebda passi ulterjuri u ddiferixxa l-appell ghad-decizjoni. Dan sar wara li l-MEPA ddikjarat id-Direttorat ra l-izvilupp propost (u dan wara li kellu fil-pussess tieghu l-Project Development Statement tal-appellant) u ma kienx jehtieg EIA ghall-izvilupp propost ghalkemm kien qed izomm ferm l-oggezzjoni tieghu ghal rifjut. L-appellant stess assuma fl-ittra tieghu in risposta li din il-komunikazzjoni tal-MEPA kienet tfisser li l-proposta hi accettabbli in principju la darba ma hassx il-htiega li jsir EIA.

Rinfaccjat b'dawn il-komunikazzjonijiet li fil-fehma tal-Qorti kienu ambigwi dwar dak li kienu effettivament qed iffissru l-partijiet, it-Tribunal kellu zewg toroq miftuhin ghalih cioe jew li jordna li l-EIA isir xorta kif ordnat minnu jew almenu jitlob spjegazzjoni cara ta' dak li kien qed jigi sostnut f'dik il-fazi tal-proceduri quddiemu. Jekk invece t-Tribunal kien ser jistrieħ fuq il-prezunzjoni li n-nuqqas ta' EIA kienet qed tfisser li ma kienx hemm bzonn ghax il-project statment kien nehha l-bzonn tieghu, messu allura indaga dwar l-impatt u l-effett li kien ser ikollu l-policy SMIA 11 fuq l-applikazzjoni, flimkien mal-policies l-oħra msemmija mill-partijiet.

It-Tribunal invece injora dan kollu li kienu kwistjonijeit li setghu kienu determinanti fuq il-vertenza u mexa biss fuq dak li qalet l-Awtorita bla ebda referenza ghal dak li jipprovdi l-policy SMIA 11 u l-project statement u jekk dawn kienux jinfluwixxu fuq il-policies l-oħra u jekk le r-raguni tar-rifjut.

Dan kollu jwassal ghal ilqugh tal-aggravju tal-appellant. Id-decizjonijiet kkwotati mill-appellant f'dan il-kaz partikolari huma adatti.

Kif intqal fis-sentenza **Grace Borg vs Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar** (App 22/10/2009) kemm il-darba il-Bord ma jittrattax u ma jaghtix kaz tas-

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sottomissjonijiet tal-appellant dan jammonta ghal punt ta' dritt appellabli quddiem il-Qorti.

Fis-sentenza **Michael Gatt vs Awtorita tal-Ippjanar** (App 19/11/2001):

Fil-fehma konsiderata tal-Qorti, il-Bord ma setghax semplicement jenuncja principju ta' dritt li ghalkemm kien rilevanti ghall-kaz, ma kienx awtomatikament jeskludi konsiderazzjonijiet ohra, fosthom setghat ohra u diskrezzjoni li kienu gew konferiti mill-Att ta' l-Ippjanar fuq il-Bord stess. Fil-fehma tal-Qorti, l-Bord ma setghax jinjora dawn il-konsiderazzjonijiet ta' natura legali li setghu kienu benissimament applikabli ghall-kaz u b'hekk il-Bord gie li ma ttrattax b'mod legalment koerenti u korrett il-kwistjoni ta' dritt li kellu quddiemu biex jirrizolvi.

### **Decide**

Il-Qorti ghalhekk qed tilqa' l-appell ta' John Cassar u tirrevoka u thassar is-sentenza tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-27 ta' Settembru 2012, u tibghatha lura quddiem lit-Tribunal sabiex tigi deciza skond il-ligi. Spejjez ghall-appellat.

**< Sentenza Finali >**

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