



QORTI TA' L-APPELL

**S.T.O. PRIM IMHALLEF
SILVIO CAMILLERI**

**ONOR. IMHALLEF
TONIO MALLIA**

**ONOR. IMHALLEF
JOSEPH AZZOPARDI**

Seduta tas-7 ta' Awwissu, 2013

Appell Civili Numru. 149/2013/1

Lawrence Attard

v.

**Direttur Generali tad-Dipartimenti tal-Kuntratti u l-
Assocjazzjoni tal-Kunsilli Lokali**

Dan hu appell imressaq fis-16 ta' Mejju 2013, minn Lawrence Attard wara decizjoni datata 29 ta' April 2013 moghtija mill-Bord ta' Revizjoni dwar Kuntratti Pubblici (minn hawn 'il quddiem, imsejjah il-"Bord") fil-kaz referenza LCA/01/2013.

Illi dan il-kaz huwa marbut mas-sejha għall-offerti li harget l-Assocjazzjoni Kunsilli Lokali *“for the provision of research and consultancy for the selective collection of organic waste in tourist areas and valorisation in farm composting plants”* (SCOW). Għal dan it-tender applikaw zewg persuni: ir-rikorrenti u s-socjeta` AIS Environmental Ltd. Il-kuntratt inghata lil din l-ahhar socjeta`, izda wara appell tar-rikorrent, il-Bord hassar l-ghoti tal-kuntratt u ddecieda hekk:

“- having noted that Mr Lawrence Attard had lodged an appeal on the 4th April 2013 against the decision taken by the Local Government Association to award the tender to AIS Environmental Limited;

“- having noted that the appellant’s claim that since the tender was not clear as to the method of adjudication and as such one were to assume that the cheapest compliant offer method was to be used; that according to the adjudication report he (ie. the appellant) obtained 71 out of 100 points and as such was adjudicated as being compliant in all respects;

“- having also noted that the Contracting Authority admitted that it had used a standard tender document which did not lay down the evaluation criteria; having also noted that in view of the particular complexity of the service required any tenderer would have to have considerable experience in the field;

“- having also noted the preferred bidder’s contention that his firm had the experience and technical background to provide the service;

“came to the following conclusions:

“1. That the tender document did not lay down the criteria to be used for adjudication purposes;

“2. That had the Contracting Authority desired to use the MEAT principle (as it had the right to do) it should have included the appropriate grid in the tender document

showing the particular specifications it required together with the weightings assigned to each criterion.

“In view of the above the Board finds in favour of the appellant and recommends that the tender be re-issued using a tender template published by the Department of Contracts, laying down in a clear manner the specifications required and the method to be used for adjudication purposes.

“Moreover, the Contracting Authority’s attention is to be drawn to the fact that it has to adhere to the regulations laid down in the Public Procurement Regulations on the processes to be used throughout the whole tendering procedure, including the adjudication process.

“The Board also recommends that the deposit paid by the appellant be reimbursed in full.”

Ir-rikorrenti qed jappella mid-decizjoni tal-Bord ghax issostni illi darba l-Bord iddecieda li jhassar l-ghoti tal-kuntratt, l-istess Bord kellu jirrakomanda li l-kuntratt jinghata lilu, bhala l-offerent li kien ghamel l-orhos offerta li kienet ukoll *‘technically compliant’*.

Din il-Qorti ma taqbilx mal-appellant. Johrog car mid-decizjoni tal-Bord li r-raguni ewlenija ghaliex il-Bord iddecieda li jhassar is-sejha pubblika inkwistjoni, ma kinitx marbuta ma’ xi nuqqas ta’ xi offerent, izda kienet minhabba l-fatt li d-dokument tal-istedina tal-offerti li kien ippubblikat mill-Assocjazzjoni Kunsilli Lokali, ma kien jispecifica l-ebda kriterju definittiv li fuqu kellu jinghata l-kuntratt. F’dan ir-rigward, ir-Regolament 28(3) tar-Regolamenti dwar il-Kuntratti Pubblici jesigi li meta tinhareg sejha ghall-offerti ghall-ghoti ta’ kuntratti pubblici ghandu jigi stabbilit jekk l-ghoti tal-kuntratt hux se jkun a bazi tal-iktar offerta ekonomika vantagguza, jew a bazi tal-aktar prezz baxx offrut konformement mal-ispecificazzjonijiet tal-offerta.

F’dan il-kaz, irrizulta illi d-dokument tas-sejha pubblika ma indika ebda wiehed minn dawn iz-zewg kriterji u lanqas

ma jidher li sar il-*weighting* tal-kriterji f'kaz ta' ghazla partikolari u l-Bord iddecieda li, fic-cirkostanzi, jhassar il-process kollu u rrakomanda lill-awtorita` kontraenti biex is-sejha issir mill-gdid fuq *tender template* mahrug mid-Dipartiment tal-Kuntratti. Kien a bazi ta' dan id-difett procedurali li l-appellant rebah (sa certu punt) l-appell li ressaq quddiem il-Bord, u la darba l-Bord ma ddecidiex il-meritu nnifsu tal-kaz, u halla l-istess impregudikat, id-decizjoni li terga' ssir sejha ghall-offerti kienet wahda gusta u konformi mal-principji generali ta' dritt amministrattiv. Fil-fatt, ghalkemm f'kuntest differenti, hekk ukoll osservat il-Prim' Awla tal-Qorti Civili fil-kawza **Bashshar v. Ministru tal-Affarijiet Barranin et**, deciza fis-26 ta' Frar 2013, fis-sens illi:

“...it-thassir ta' decizjoni min-naha tal-Qorti jgib biss li l-istess Qorti terga' tghaddi l-kaz ghas-smiegh lil dik l-awtorita` ghal-konsiderazzjoni mill-gdid tal-kaz.”

Fil-kuntest tal-ilment li ressaq l-appellant quddiem il-Bord, u d-decizjoni li ha l-istess Bord, ir-rimedju li nghata kien dak gust u opportun.

Apparti dan, jidher ukoll illi dan l-appell ma kellux jitressaq ukoll kontra d-Dipartiment tal-Kuntratti. Dan qed jinghad, ghax kif tajjeb issottometta d-Dipartiment appellat, la darba l-kuntratt inkwistjoni ghandu valur taht mija u ghoxrin elf Euro (€120,000), huwa regolat u amministrat mill-awtorita` kontraenti koncernata, f'dan il-kaz, l-Assocjazzjoni Kunsilli Lokali. L-ghotja ta' dan il-kuntratt ma kinitx, ghalhekk, soggetta ghall-funzjonijiet regolatorji tad-Direttur tad-Dipartiment tal-Kuntratti, izda kienet regolata u amministrata mill-awtorita` kontraenti msemija. Il-Bord, fil-fatt, ma rreveda ebda decizjoni li kienet gejjja mid-Dipartiment tal-Kuntratti, izda ezamina u rrevoka decizjoni li nghatat mill-Assocjazzjoni Kunsilli Lokali li, f'din l-istanza, kif gia` nghad, kienet qed tagixxi bhala l-awtorita` kontraenti.

Ghaldaqstant, ghar-ragunijiet premissi tiddisponi mill-appell ta' Lawrence Attard billi tichad l-istess u tikkonferma d-decizjoni appellata tal-Bord ta' Revizjoni

Kopja Informali ta' Sentenza

dwar Kuntratti Pubblici tad-29 ta' April 2013, bl-ispejjez
jithallsu kollha mir-rikorrent appellant.

< Sentenza Finali >

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