



MALTA

**QORTI TA' L-APPELL**

**S.T.O. PRIM IMHALLEF**

**SILVIO CAMILLERI**

**ONOR. IMHALLEF**

**TONIO MALLIA**

**ONOR. IMHALLEF**

**JOSEPH AZZOPARDI**

Seduta tas-27 ta' Gunju, 2014

Appell Civili Numru. 89/2014/1

**Joe Micallef & Son Express Skip Services Limited (C 47507)**

**v.**

**Id-Direttur tal-Anzjani u Kura fil-Komunita`,**

Qrati tal-Gustizzja

Pagna 1 minn 7

**id-Direttur Generali (Kuntratti) u Saviour Mifsud**

**Il-Qorti:**

Dan hu appell imressaq fit-12 ta' Marzu, 2014, mis-socjeta` Joe Micallef & Son Express Skip Services Limited wara decizjoni datata 18 ta' Frar, 2014, moghtija mill-Bord ta' Revizjoni Dwar Kuntratti Pubblici (minn hawn 'l quddiem, imsejjah il-"Bord") fil-kaz numru 649 (CT 2167/2011).

Dan il-kaz huwa marbut ma' sejha ghall-offerti li hareg il-Gvern ghal "*provision of skips and collection of waste of St. Vincent de Paule Residence and Homes for the Elderly*". Is-socjeta` appellanti tefghet offerta, izda nzerta li ma kenitx l-orhos wahda u r-rakkomandazzjoni kienet illi l-kuntratt jinghata lill-appellat Saviour Mifsud li kellu l-orhos offerta. Is-socjeta` appellanti ressqet appell quddiem il-Bord kontra din ir-rakkomandazzjoni u allegat li Saviour Mifsud ma kellux jitqies il-*preferred bidder* peress illi ma kellux il-licenzji necessarji sabiex jipprovdi s-servizzi rikjesti. Il-Bord cahad l-appell bis-sentenza tat-18 ta' Frar, 2014. Dak il-Bord, wara li sema' is-sottomissjoniet tal-partijiet, ippronunzja s-segwenti decizjoni:

"Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 4<sup>th</sup> November 2013 and also through the Appellant's verbal submissions during the hearing held on 9<sup>th</sup> January 2014, had objected to the decision taken by the pertinent Authority, in that:

- “a) The Preferred Bidder was not in possession of the mandatory permits to transport hazardous material.
- “b) Appellant contends that the mandatory permits should have been included as submissions with the tender document.

“Having considered the Contracting Authority’s verbal submissions during the hearing held on 9<sup>th</sup> January 2014, in that:

- “a) The Tender document did state that ‘bidders must be in possession of the necessary licences’.
- “b) Bidders signed a declaration confirming that they were in line with all the local regulations.
- “c) The preferred Bidder was fully compliant with all the requirements as laid out in the tender document.

“Reached the following conclusions:

- “1. This Board opines the tender document should have included mandatory submission of the relative permits.
- “2. The fact that the Preferred Bidder signed the declaration that he is in possession of the necessary licences did suffice the requirement of the tender document. However, on the award of tender, the Evaluation Board is in duty bound to ensure that such required licences are in fact in possession of the Preferred Bidder.

- “3. The Evaluation Board assessed the Preferred Bidder’s offer on the basis of what was ‘required and duly submitted’ by same.
- “4. The Preferred Bidder’s offer was fully compliant and the cheapest.

“In view of the above, this Board finds against the Appellant Company and recommends that the deposit paid by the Appellant should not be reimburse.”

Is-socjeta` Joe Micallef & Son Express Skip Services Limited appellat minn din id-decizjoni ghal quddiem din il-Qorti. L-aggravju huwa bbazat fuq ic-cirkostanza li s-servizzi li jridu jinghataw, b’mod partikolari l-gbir u processar ta’ skart derivanti mill-isptar St. Vincent de Paule, jinkludi *clinical waste* li hu kkonsidrat bhala *hazardous waste* ghall-effetti kollha tal-ligi. Gie spjegat li r-Regolamenti dwar il-Garr Stradali ta’ Merkanzija Perikoluza bil-Vetturi bil-Mutur (Avviz Legali 211 tal-2003 kif emendat) jipprovdi li kull min igorr merkanzija perikoluza jrid ikollu, fost ohrajn, ic-cetifikat ta’ konsulent dwar Sigurta` minn Oggetti Perikoluzi (DGSA) ghal perjodu ta’ mhux anqas minn hames snin, li jirrikjedi stharrig fuq kif jingarr dan it-tip ta’ skart kif spjegat fir-Raba’ Skeda tal-istess Regolamenti. Hu ammess li l-appellat Saviour Mifsud ma ghandux dan ic-certifikat, izda fis-sentenza tieghu il-Bord qal li dan ic-certifikat ma kienx rikjest fit-*tender document*, izda ordna li qabel ma jinghata l-kuntratt lil *preferred bidder* irid jigi accertat li l-licenzji mehtiega jkunu fil-fatt fil-pussess tieghu.

Wara li semgħet lid-difensuri tal-partijiet u rat l-atti kollha tal-kaz u d-dokumenti esebiti, sejra issa tghaddi biex tqis u titratta dan l-appell.

Ikkonsidrat:

Jirrizulta li t-*tender documents* ma kienux jesigu li, mal-offerta, jigu pprezentati l-licenzji kollha mehtiega biex dak li jkun ikun jista' jwettaq is-servizzi mitluba, pero`, l-istess dokumenti, kif spjega ic-chairman tal-Evaluation Board, "*stated that bidders must possess all the licences and to be in line with the requirements of legislation*". Gie muri, pero`, li t-*tender documents* kellhom dak li hu msejjah bhala "*a mobilisation period of four weeks*", f'liema terminu, dak li lilu jkun rakkomandat li jinghata l-kuntratt ikollu jottjeni l-licenzji mehtiega. Dan ifisser illi ghalkemm kull offerent jintrabat li jkollu l-licenzji kollha mehtiega, ma hux mehtieg li kull offerent ikollu l-licenzji u l-permessi kollha mehtiega mat-tfiegħ tal-offerta – sakemm dan ma jkunx imnizzel b'mod espress fil-hrug għall-offerti. Is-sejha għall-offerti, f'dan il-kaz, la jirreferi għal skart perikoluz (ghax mhux kull skart kliniku hu necessarjament perikoluz, ghalkemm hafna drabi hekk hu) u lanqas ma tesigi li min jitfa' offerta jkun diga` munit bil-licenzji kollha relattivi.

Kopja Informali ta' Sentenza

Inoltre, il-ligi trid li min ikun involut fi trasport ta' merkanzija perikoluza jkollu imqar persuna wahda li jkun konsulent bic-certifikat DGSA. Dan ifisser li biex l-appellat Saviour Mifsud ikun konformi mal-ligi jrid jizgura li jahtar konsulent tas-sigurta` ghat-trasport li jkollu dan ic-certifikat. Mhux mehtieg li dan Saviour Mifsud personalment ikollu dan ic-certifikat, izda li jahtar konsulent b'din il-kwalifika. Din kwistjoni, pero`, li tolqot l-esekuzzjoni tal-kuntratt, u kif intqal mill-Qorti Suprema tal-Kanada fis-sentenza **Double N Earthmovers Ltd. v. Edmonton (City)**, deciza fil-25 ta' Jannar, 2007 (kaz 2007 SCC3), li kienet tikkoncerna wkoll garr ta' skart, "*to impose a duty on owners to investigate whether a bidder will comply with the terms of its bid would overwhelm and ultimately frustrate the tender process by creating unwelcome uncertainties. ... Whether or not the bidder is at the time of tender, capable of performing as promised is irrelevant in the light of the bidder's legal obligation to do so once its bid is accepted.*"

Mill-kumpless tac-cirkostanzi, f'kaz ta' sejha li ma tinsistix mod iehor, mhux mehtieg li offerent ikun, meta jitfa' l-offerta, f'posizzjoni li jwettaq dak li obbliga ruhu li jwettaq, basta li dak li jkun jimpenja ruhu li jwettaq is-servizz skont id-dettami tal-ligijiet vigenti tal-pajjiz kif fil-fatt gara f'dan il-kaz. Darba dak li jkun issodisfa dak rikjest fid-dokumenti tas-sejha, jibqa' "*technically compliant*", u l-offerent rebbieh ikun marbut li fil-qadi ta dmirijietu josserva l-ligijiet kollha tal-pajjiz.

Kwindi, la darba r-raguni tal-iskwalifika indikata mill-kumpanija appellanti ma tohrogx mill-kundizzjonijiet tas-sejha ghall-offerti, l-aggravju taghha qed jigi michud.

Ghaldaqstant, ghar-ragunijiet premissi, tiddisponi mill-appell tas-socjeta` Joe Micallef & Son Express Skip Services Limited billi tichad l-istess u tikkonferma d-decizjoni li ha l-Bord ta' Revizjoni Dwar Kuntratti Pubblici fit-18 ta' Frar, 2014.

L-ispejjez jithallsu mill-imsemmija socjeta` appellanti.

**< Sentenza Finali >**

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