MALTA

QORTI TAL-MAGISTRATI (MALTA)

MAGISTRAT DR.

FRANCESCO DEPASQUALE

Seduta tat-22 ta' Jannar, 2015

Avviz Numru. 81/2012

Graziella Galea
(ID 520683M)
vs

Kurt Farrugia u Charlon Gouder

Il-Qorti,

Rat l-avviz ippresentat fit-2 ta' Marzu 2012 fejn ir-rikorrenti ghamlet referenza ghall-ahbar imxandar fuq One TV fit 28 u 29 ta' Frar 2012, ta' liema stazjoni l-intimat Kurt Farrugia kien l-editur u l-intimat Charlon Gouder kien l-awtur, u talbet lill-Qorti tiddikjara illi dak li intqal kien libelluz u malafamanti fil-konfront tar-rikorrenti u kellu bhala skop ewlieni dak li jtellef u jnaqqas ir-reputazzjoni taghha. Talbet ukoll illi dina il-Qorti tikkundanna lill-istess intimati jhallsuha danni a tenut tal-Art 28 tal-Kap 248.

Rat ir-risposta tal-konvenuti ippresentata fit 30 ta' April 2012 fejn premettew illi t-talbiet attrici kienu infondati fil-fatt u fid-dritt peress illi l-publikazzjoni imsemmija ma kienetx libelluza fil-konfront taghha. Sahqu illi x-xandira kienet rappurt gurnalistiku dwar materja ta' interess pubbliku attwali u accettabli f'socjeta demokratika u tikkontjeni kummenti jew opinjonijiet li jikkonsistu f'espressjoni ta' l-opinjoni u apprezzament jew value judgment tal-gurnalist u hija fair comment maghmul in buona fede fuq materja ta' interess pubbliku.

Rat it-traskrizzjoni ta' l-ahbar imxandar fit 28 ta' Frar 2012 fejn intqal is-segwenti:

> *"Jismu Joseph Vella, maghruf bhala Ta' Zeppi. Jigi z-ziju ta' Graziella Galea, bint l-eks Ministru Censu Galea. ghandu kumpannija jisimha VellJo li xoghlha huwa li tigbor l-iskart domestiku. Dokumenti ufficjali li ghandu f'idejh One News juru kif intala japrova kuntratt tempranju ghal gbir ta' skart domestiku. Prezenti ghal din il-laqgha kien hemm is-Sindku Graziella Galea. Intqal li l-Kunsill baghat ghal tlett kwotazzjonijiet izda dahhlu biss tnejn li b'xi mod jew iehor kellu jew ghandu x'jaqsam maghhom Joe Vella, maghruf bhala Ta' Zeppi. Il-kumpanniji li tefghu l-offerti taghhom dakinhar kienu Northern Cleaning u l-kumpannija l-ohra jisimha VellJo. VellJo hija l-kumpannija taz-ziju ta' Graziella Galea li, fiz-zminijiet l-imghoddija kien parti mit-tim tal-gakketta l-blu. Dakinhar l-Kunsill Lokali ntalab japprova dan il-kunrtatt li suppost kellu jkun wiehed temporanju. Is-Sindku Graziella Galea mkien ma ddikjarat kunflitt ta' interess, xi haga li legalment kienet obbligata li taghmel. Madanakollu, hija mhux tali ma ddikjaratx il-kunflitt ta' i nteres, izda sahansitra ivvuta favur iz-ziju taghha kif jindikaw il-minuti tal-Kunsill. Joe Vella, li t-trukkijiet tieghu jpoggihom f'din l-ghalqa, huwa kostitwent fuq it-tnax-il distrett. vella huwa ukoll kanvasser kbir tal-ex Ministru censu Galea li jigi missier is-Sindku Graziella Galea, li fis-sena 2007 inqabad li kien jaf bi brimba ta' korruzzjoni fl-ADT izda ma ghamel xejn biex isolviha"*

Rat it-traskrizzjoni ta' l-ahbar imxandar fid 29 ta' Frar 2012, fejn intqal is-segwenti:

> *L-iskandlu tas-Sindku Nazzjonalista ta' San Pawl il-Baha, Graziella Galea, li ma ddikjaratx il-kunflitt ta' interess taghha idur ma' kuntratt temporanju ghal gbir tal-iskart domestiku. fil-laqgha tal-Hamis, 29 ta' Ottubru 2009, il-Kunsill Lokali intalab japprova dan il-kuntratt liz-ziju tas-Sindku Graziella Galea li ma mxietx skond l-ispirtu tal-Ligi. Skond l-Artikolu 19 tal-Kap 363 tal-Ligijiet ta' Malta, is-Sindku Graziella Galea kienet obbligata tiddikjara kwalumkwe interess meta t-tender ghal gbir tal-iskart kien qed jigi approvat. F;dan il-kaz, hija kienet mitluba tiddikjara li s-sid tal-kumpannija VellJo, li spiccat sebhet il-kuntratt tal-gbir tal-iskart b'mod temporanju, kien jigi zijuha, kanvaser kbir ta' missierha, l-ex Ministru Censu Galea. Il-Ligi taghilha cara li s-Sindku mhux biss kellha tiddikjara l-kunflitt ta' interess, izda sahansitra la setghet tivvota u wisq anqas tippresjedi jew tiehu sehem fid-diskussjoni, xi haga li ma gratx, kif jindikaw l-istess minuti tal-Kunsill illi gew approvati. Meta kien qed jiehu sehem fi programm 'Realta', fuq One TV, is-Segretarju Generali tal-Partit Nazzjonalisa Pawlu Borg Olivier ma kienx jaf iwiegeb dwar dan il-kaz:*
>
> *Gino Cauchi: "Gie zvelat kaz illi din tat il-kuntratt tat-tindif ta' San Pawl il-Bahar lil zijuha u meta hadet din id-decizjoni, la ddikjarat kunflitt ta' interess, la harget barra mill-laqgha, qaghdet hemmhemm illaqgha, mbuttat 'l quddiem l-offerta ta' zijuha, u vvutat favuriha. ghidli dak hux nepotizmu jew le, Pawl"*
>
> *Pawlu Borg Olivier: "Dak wiehed irid jarah"*
>
> *Gino Cauchi: "E, orrajt! Eh ok! Qed tara! dak ma nsemmuhx, dak ma nsemmuha, u ejja nsemmu kollox biex wiehed ikun kredibbli, ta!"*

> *B'dan il-kuntratt ta' kwasi hmistax-il elf Euro fix-xahar, iz-zijju ta' Graziella Galea diga rcieva mal erba mitt elf Euro fi hlasijiet. Il-kuntratt kellu jkun wiehed temporanju izda, minn Ottubru 2009 'l hawn, dan il-kuntratt qatt ma reggha gie diskuss."*

Rat l-affidavit tar-rikorrenti **Graziella Galea** ippresentat fid 9 ta' Lulju 2012.

Semghet ix-xhieda ta' **Mario Camilleri**, kunsillier tal-Kunsill Lokali ta' San Pawl fiz-zmien illi gie ippubblikat l-ahbar, moghtija fit 2 ta' Novembru 2012.

Semghet ix-xhieda ta' **Frank Gauci**, kunsillier tal-Kunsill Lokali ta' San Pawl fiz-zmien illi gie ippubblikat l-ahbar, moghtija fit 23 ta' Settembru 2013.

Semghet ix-xhieda ta' **Raymond Bartolo**, kunsillier tal-Kunsill Lokali ta' San Pawl fiz-zmien illi gie ippubblikat l-ahbar, moghtija fit 23 ta' Settembru 2013.

Rat illi fit 23 ta' Settembru 2013 ir-rikorrenti iddikjarat illi ma kellhiex aktar provi x'tippresenta.

Semghet ix-xhieda ta' **Dr Simon Manicolo**, rappresentant tal-Broadcasting Authority, moghtija fil 11 ta' Novembru 2013, illi esebixxa kopja tar-recordings taz-zewgt ahbarjiet imxandra u meritu tal-akwza odjerna,

Rat il-produzzjoni meritu tal-kawza odjerna.

Semghet ix-xhieda in kontro ezami ta' Graziella Galea moghtija fl-20 ta' Jannar 2014.

Semghet ix-xhieda ta' l-intimat **Kurt Farrugia** moghtija fit 2 ta' Mejju 2014.

Rat illi fis 16 ta' Gunju 2014 l-intimati iddikaraw illi ma kellhomx aktar provi x'jippresentaw u ghalhekk il-kawza thalliet ghas-sottomissjonijiet bil-miktub tal-partijiet.

Rat in-nota ta' sottomissjonijiet tar-rikorrenti ippresentata fis 6 ta' Novembru 2014.

Rat in-nota ta' sottomissjonijiet ta' l-intimati ippresentata fl-1 ta' Dicembru 2014.

Rat illi fil 15 ta' Dicembru 2014 il-kawza thalliet ghas-sentenza ghallum.

Ikkunsidrat

Mill-provi prodotti, jirrizulta illi r-rikorrenti kienet Sindku tal-Kunsill Lokali ta' San Pawl il-Bahar ghal-legislatura illi kienet bejn l-1 ta' April 2008 u il-31 ta' Marzu 2012.

Jirrizulta mix-xhieda, u mhux minn dokumentazzjoni esebita, illi fid-29 ta' Ottubru 2009, il-Kunsill Lokali ta' San Pawl il-Bahar kien iddiskuta w approva kuntratt temporanju ta' gbir ta' skart domestiku lil-kumpannija bl-isem ta' Vell-Jo Services, illi kienet kumpannija tar-ragel ta' oht ommha, ossija certa Joe Vella.

Jirrizulta li l-ahbar dwar tali kuntratt gie a konoxxenza ta' l-intimati fi Frar 2012, fi zmien il-kampanja elettorali ghall-Kunsilli Lokali, fosthom ta' San Pawl il-Bahar, meta l-istess intimati ipprocedew biex ippubblikaw zewgt 'features' fl-ahbarjiet rispettivament tat-28 ta' Frar 2012 u 29 ta' Frar 2012, f'liema ahbarjiet l-intimati qalu s-segwenti affarjiet illi dwarhom ir-rikorrenti hassitha malafamata u ghalhekk niedet il-proceduri odjerni:

1. Illi kienet presenti waqt il-laqgha tal-Kunsill Lokali ta' San Pawl il-Bahar meta inghata kuntratt ghal gbir ta' skart domestiku lill Joe Vella u ma kienetx iddikjarat il-kunflitt ta' interess taghha;

2. Illi, skond l-Artikolu 19 tal-Kap 363 tal-Ligijiet ta' Malta li jirregola il-Kunsilli Lokali, hija, bhala Sindku, kellha dmir li tiddikjara il-kunflitt ta' interess meta gie diskuss dana it-tender; u

3. Illi hija kienet imbuttat 'l quddiem l-offerta taz-ziju.

Jirrizulta, mix-xhieda prodotta mir-rikorrenti, illi fil-mument illi kienet giet diskussa dina l-kwistjoni tat-tender tal-gbir ta' skart domestiku, hija minnufih gharrfet lill-Kunsill illi kellha kunflitt ta' interess ghax Joe Vella kien iz-ziju tar-rispett taghha, fatt illi jidher illi l-kunsilleria kollha kienu gia a korrent taghha, izda, wara li l-kunsilliera kollha presenti taz-zewgt partiti indikaw illi tali parentela ma kienetx tenhtieg illi taghmel tali dikjarazzjoni u tallontana ruha mill-laqgha, il-Kunsill ghadda biex japprova unanimament it-tender favur Joe Vella.

Jirrizulta minn dak li ntqal mix-xhieda, u mhux minn provi dokumentarji, illi tali dikjarazzjoni inizzjali da' parte tar-rikorrenti ma gietx imnizzla fil-minuti tal-laqgha ta' dakinhar.

Ikkunsidrat

Il-Qorti tidba sabiex tosserva illi, bhalma jigri f'kull kaz, il-Qorti trid timxi esklussivament fuq il-provi illi jkunu gew prodotti quddiemha u ma tistax tistrieh fuq supposizzjonijiet jew assunzjonijiet li jsirulha. Dana qieghed jinghad, ghax l-intimati, filwaqt illi jibbazaw l-argumenti kollha taghhom fuq il-fatt illi r-rikorrenti naqqset milli tiddikjara il-kunflitt ta' interess taghha ghax dana ma jirrizultax imnizzel fil-minuti tal-laqgha partikolari tal-Kunsill, naqqsu milli jikkorroboraw tali allegazzjoni billi jippresentaw kopji ta' dawna l-minuti quddiem il-Qorti, ghalkemm tali Minuti huma pubblici u facilment presentabbli.

Il-Qorti tista tieqaf hawn u tghaddi sabiex taghti decizjoni taghha abbazi tal-fatt illi l-prova kardinali da' parte ta' l-intimati ma gietx imressqa quddiem il-Qorti. Madanakollu, la darba l-intimat qed iqajjmu bhala difiza, dik tal-'*fair comment*', ikun opportun illi tinghata l-attenzjoni illi tali difiza jimmeritalha, kemm fl-aspett legali kif ukoll fattwali taghha.

Ikkunsidrat

Il-Qorti, qabel xejn, ma ghandha ebda dubju illi r-rikorrenti hija persuna pubblika u, bhala tali, hija soggetta ghal livell ta' kritika ferm oghla minn persuna kwalumkwe, u dana kif

enuncjat fis-sentenza **Ligens vs Austria**, u abbracjata mill-Qorti Maltin, meta il-Qorti Ewropea ghad-Drittijiet tal-Bniedem stqarret is-segwenti:-

Freedom of the press furthermore affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. More generally, freedom of political debate is at the very core of the concept of a democratic society which prevails throughout the Convention.

The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance. No doubt Article 10 para. 2 (art. 10-2) enables the reputation of others - that is to say, of all individuals - to be protected, and this protection extends to politicians too, even when they are not acting in their private capacity; but in such cases the requirements of such protection have to be weighed in relation to the interests of open discussion of political issues.

Dana il-fatt qieghed jigi rilevat peress illi dina l-Qorti temmen li, la darba persuna dahhelt fl-arena politika sabiex isservi ic-cittadin illi jeleggiha, allura hija accettat li tkun soggetta ghall skrutinju ta’ kull decizjoni u azzjoni illi tkun ittiedet minnha u tista tkun soggetta ghall-kritika f’livell ferm oghla minn dik ta’ cittadin normali kif ukoll ufficjal pubbliku li ma huwiex politiku.

Illi, mill-banda l-ohra, id-difiza ta' 'fair comment’ imqajjma mill-intimati ghandha il-parametri taghha u, kif jinghad f’**Gatley on Libel and Slander** :

To succeed in a defence of fair comment the defendant must show that the words are comment, and not a statement of fact. He must also show that there is a basis of fact for the comment, contained or referred to in the matter complained of. Finally, he must show that the comment is on a matter of public interest, one which has expressly or implicitly put before the public for judgment or is otherwise a matter with which the public has a legitimate concern. If, however, the plaintiff can show that the comment was not made honestly or was actuated by malice, he will defeat the plea.

Dana it-taghlim gie zviluppat u spjegat aktar fid-dettal mill-Qorti tal-Appell Ingliza fis-sentenza **Spiller vs Joseph** deciza fl-1 ta' Dicembru 2010, fejn Lord Phillips ghamel is-segwenti konsiderazzjonijiet meta wiehed iqis id-difiza ta' 'fair comment':

A subsidiary but important issue was what it was that a defendant had to prove in order to establish the defence of fair comment. Counsel for the plaintiff submitted that the defendant had to establish that: (i) the words complained of were comment; (ii) the comment was on facts; (iii) the facts commented on constituted a matter of public interest; (iv) the comment was objectively “fair”; that is the comment was one that was capable of being honestly founded on the facts to which it related, albeit by someone who was prejudiced and obstinate; (v) the comment represented the defendant’s honest opinion. If he discharged all these burdens, the defence could none the less be defeated by proof of malice on the part of the defendant, but the onus of proving malice lay on the plaintiff. Both the

Court of Appeal and the House of Lords held that there was no burden on the defendant to establish the fifth element. The defendant's honesty was assumed unless the plaintiff could disprove it by establishing malice.

Bhalma gia ghamlet din il-Qorti f'kawzi simili, hija thoss illi jkun opportun illi dawna l-hames elementi kif fuq imsemmija jigu ezaminati fid-dawl tal-provi prodotti quddiemha sabiex jigi stabbilit jekk, fil-kaz odjern, dak illi intqal kienx 'fair comment' jew le.

(i) "*the words complained of were comment*" - Jirrizulta mill-provi prodotti illi l-intimati, aktar milli ghaddew kumment fuq l-agir tar-rikorrenti fl-ghoti tal-kuntratt, sahqu fuq il-fatt illi hija ma ddikjarat ebda kunflitt ta' interess, u ghalhekk allegaw fatt aktar milli ghamlu kumment. Madanakollu, kif jghid il-**Gatley on Libel and Slander** (Sweet & Maxwell (London), 1981 dwar in-natura ta' kumment:

> *A comment is a statement of opinion on facts. It is comment to say that a certain act which a man has done is disgraceful or dishonourable; it is an allegation of fact to say that he did the act so criticised. "A libellous statement of fact is not a comment or criticism on any thing". But while a comment is usually a statement of opinion as to the merits or demerits of conduct, an inference of fact may also be a comment. There are, in the cases, no clear definitions of what is comment. If a statement appears to be one of opinion or conclusion, it is capable of being comment. (para. 697, pagna 294).*

Ghalhekk, la darba jirrizulta illi l-intimati ghazlu illi jaslu ghall-konkluzjonijiet fuq fatti kif minnhom spjegati, wiehed jista jasal ghal konklzjoni ukoll illi dak minnhom maghmul kien kumment fil-parametri kif fuq spjegat mill-Gately.

(ii) "*the comment was on facts*" - jidher, mill-fatti kif prodotti, illi ghalkemm huwa minnu li l-kumment illi sar kien ibbazat fuq fatti illi kienu sehhew, jidher illi tali fatti ma kienux rapporti b'mod korrett bir-rizultat illi taw stampa mhux kompleta tal-kwistjoni kollha. Dana qieghed jinghad ghal zewgt ragunijiet principali.

(i) L-ewwel u qabel kollox, jirrizulta illi ir-rikorrenti kienet attwalment iddikjarat illi hija kellha kunflitt ta' interess, kif del resto ikkonfermat minn tlett kunsilliera ohra illi kienu presenti dakinhar illi gie diskuss t-tender, u ma ingiebet ebda prova dokumentarja li turi illi attwalment ma tnizzilx fil-minuti li hija ma ghamlitx tali dikjarazzjoni, peress illi tali minuti ma gew ippresentati.

(ii) It-tieni, ghalkemm l-intimati, fil-proceduri odjerni jaghmlu referenza ghall Artikolu 11 tal-Kodici ta' l-Etika tal-Kunsilliera, li kopja tieghu ma gietx esebita in atti, fl-artikoli meritu tal-kawza odjerna, l-intimati ibbazaw l-allegazzjonijiet taghhom fuq obbligu, illi, skond huma, ir-rikorrenti kellha a tenur ta' l-Artikolu 19 tal-Kap 363 tal-Ligijiet ta' Malta illi jirregola il-Kunsilli Lokali. Minn qari akkurat ta' tali artikolu tal-Ligi, ma jidhirx illi kien hemm xi obbligu, kif qed jigi allegat, li r-rikorrenti tiddikjara kunflitt

ta' interess peress illi l-offerent kien iz-ziju tar-rispett taghha, u ghalhekk kien korrett il-parir illi l-istess rikorrenti inghatat mill-kunsilleria presenti dakinhar, taz-zewgt partiti, li ma kienx jenhtieg li tiddikjara il-kunflitt taghha

(iii)"*the facts commented on constituted a matter of public interest*" - il-Qorti ma ghandha ebda dubju illi l-ghoti ta' kuntratt ta' gbir ta' skart domeskitu minn Kunill Lokali kienet, minnha innifisha, tikkostitwixxi kwistjoni ta' interess pubbliku. Dana qieghed jinghad peress illi hemm entita' pubblika involuta u hemm fondi pubblici li qed jintuzaw u li ghalhekk jimmerita illi jkun kummentat dwaru.

(iv)"*the comment was objectively "fair"; that is the comment was one that was capable of being honestly founded on the facts to which it related, albeit by someone who was prejudiced and obstinate*;" - bhalma gia kellha l-opportunita' tikkummenta il-Qorti aktar 'l fuq, l-fatti illi abbazi taghhom l-intimati ibbazaw l-istorja kollha ma kienux korretti u ghalhekk certament ma jistghux jitqiesu bhala oggettivament korretti u "fair" fil-konfront tar-rikorrenti, peress illi pingew sitwazzjoni invertijera ghall-ahhar u li wasslet lill-qarrejj ordinarju sabiex jasal ghall-konkluzjonijiet ta' azzjoni da' parte tar-rikorrenti sabiex tikkommeti dak illi huwa msejjah bhala "nepotizmu" meta, in fatti, dana ma kienx il-kaz.

(v) "*the comment represented the defendant's honest opinion*." - ghalkemm il-Qorti ma ghandhiex dubju illi l-kummenti illi saru jirrispekkjaw l-opinjoni ta' l-intimati, ma tistax ma tosservax illi l-fatt illi gie allegat dover fuq ir-rikorrenti, liema dover, madanakollu, ma kienx applikabbli fil-Ligi minnhom indikata huwa sufficjenti biex id-difiza tal-'fair comment' tigi annullata bl-argument li l-kumment taghhom kien wiehed malizjuz u intenzjonat sabiex iqarraq bis-semmiegh, aktar u aktar in vista tal fatt illi tali kumment sar fl-eqqel tal-kampanja elettorali tal-Kunsill Lokali ta' San Pawl il-Bahar.

Kif stqarr Lord Nichols fil-kawza **Cheng** [2001] EMLR 777

> "*Proof of malice is the means whereby a plaintiff can defeat a defence of fair comment where a defendant is abusing the defence. Abuse consists of using the defence for a purpose other than that for which it exists.*"

Il-Qorti tikkonkludi dawn il-konsiderazzjonijiet billi taghmel referenza ghal dak li qalet il-Qorti Ewropea fil-kawza Fresos & Roire vs France

> *"the press plays an important role in a democratic society, although it must not overstep certain bounds, in particular in respect of reputation and rights of others. People exercising freedom of expression including journalists undertake duties and responsibilities."*

F'dan il-kaz, il-Qorti thoss illi l-intimati naqqsu mid-dover taghhom lejn is-semmiegha taghhom, meta allegaw fatti inverijeri u ghaddew kummenti fil-konfront tar-rikorrenti illi kienu malfamanti fil-konfront taghha.

Konkluzjoni

Il-Qorti

Wara illi rat il-provi kollha prodotti quddiemha u semghet ix-xhieda imressqa quddiemha,

Wara illi rat is-sottomissjonijiet ta’ l-abbli difensuri tal-partijiet

Tghaddi biex taqta’ u tiddeciedi l-kaz billi

Tichad l-eccezzjonijiet kollha ta’ l-intimati

Tilqa t-talbiet attrici u ghalhekk

Tiddikjara illi l-ahbarjiet imxandra fuq One TV fit 28 u 29 ta’ Frar 2012 li t-traskrizzjoni taghhom giet esebita a fol 2 u 3 tal-process kienu malafamanti u libelluzi fil-konfront tar-rikorrenti u intizi biex itellfu jew inaqqsu r-reputazzjoni taghha u

Tikkundanna, ai fini ta’ l-Artikolu 28 tal-Kap 248 tal-Ligijiet ta’ Malta, lill-intimati in solidum bejniethom ihallsu lir-rikorrenti, in linea ta’ danni, is-somma ta’ elfejn Euro (€2,000).

Spejjez tal-proceduri odjerni u imghax fuq id-danni hekk likwidati a kariku ta’ l-intimati in solidum bejniethom.

< Sentenza Finali >

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