



MALTA

QORTI TA' L-APPELL

S.T.O. PRIM IMHALLEF

SILVIO CAMILLERI

ONOR. IMHALLEF

TONIO MALLIA

ONOR. IMHALLEF

JOSEPH AZZOPARDI

Seduta tad-29 ta' Mejju, 2015

Appell Civili Numru. 63/2015/1

B Outlets Limited (C47056)

v.

Mdina Local Council, Alexander P. Cutajar u d-Dipartiment tal-Kuntratti

Dan hu appell imressaq fil-25 ta' Frar 2015, mis-socjeta` B Outlets Limited wara decizjoni datata 6 ta' Frar 2015, moghtija mill-Bord ta' Revizjoni dwar Kuntratti Pubblici (minn hawn 'il quddiem imsejjah "il-Bord") fil-kaz *tender* no. MLC 4/14.

Dan il-kaz huwa marbut mas-sejha ghall-offerti li hareg il-Kunsill Lokali tal-Mdina ghall-holqien u operazzjoni ta' café u gelateria fil-Casino Notabile tal-istess lokal. Ghal dan it-*tender* applikaw diversi entitajiet, fosthom is-socjeta` B Outlets Limited, li pero`, kellha l-offerta li ma ntlaghetx peress li gabret anqas punti mill-offerta ta' Alexander P. Cutajar. Is-socjeta` appellanti giet notifikata b'dan ir-rizultat fl-20 ta' Dicembru 2014. Is-socjeta` B Outlets Limited ma qablitx ma' din id-decizjoni u fis-6 ta' Jannar 2015, ressqet appell quddiem l-imsemmi Bord li b'decizjoni tas-6 ta' Frar 2015 cahad l-appell peress li tressaq *fuori termine*. Id-decizjoni tal-Bord hija s-segwenti:

"The Public Contracts Review Board,

"- Having established that the estimated value of the tender in caption is eighty thousand Euro (€80,000);

"- Having noted that the letter notifying objector was delivered on the 20th December 2014;

*“- Having noted Regulation 21.(3) of the Public Contracts Procurement Regulations, S.L.174.04, that states that “Any tenderer or candidate who is aggrieved by; the award indicated by the contract authority may **within five working days** from the date of notification, file a letter of objection ...
...”;*

*“- Having noted Regulation 84 of the same Regulations which states that “The notice shall be filed within **ten calendar days** following that date on which the contracting authority has by fax or other electronic means sent its proposed award decision”;*

“- Having noted that the letter of objection was filed on the 14th January 2015 which is 14 days working days and 25 calendar days after the notification of the rejection;

“Resolves that the objection was not filed within the legal time limit. Thus this Board declares that the objection is not according to Regulations and that it cannot consider the objection any further.

“In the circumstances, this Board recommends that the deposit paid by the appellant, when filing the objection, be reimbursed.”

Is-socjeta` rikorrenti appellat mid-decizjoni tal-Bord ghax issostni li l-Bord kellu xorta wahda jqis l-oggezzjoni taghha, ghax kieku ntlaha, ir-rizultat kien iwassal ghall-iskwalifika tal-offerent maghzul.

Wara li semghet it-trattazzjoni tad-difensuri tal-partijiet u rat l-atti kollha tal-kawza, din il-Qorti sejra tghaddi ghas-sentenza taghha.

Ikkunsidrat:

Din il-Qorti tara li dan hu appell frivolu u vessatorju. Skont l-Artikolu 21 tar-Regolamenti inkwistjoni, oggezzjoni ghandha ssir fi zmien hamest ijien tax-xoghol mid-data tan-notifika tad-decizjoni. F'dan il-kaz, hu car li l-oggezzjoni giet prezentata tardivament. Ir-regolament fuq riportat ghandu jkun interpretat fis-sens illi t-terminu fih preskritt ghall-propozizzjoni tal-appell mid-decizjoni tal-awtorita` kontraenti huwa wiehed perentorju. Il-hamest ijiem huma jiem ta' xoghol li jibdew jghaddu min-notifika tad-decizjoni, u f'dan il-kaz dan it-terminu thalla jiskadi inutilment.

Din il-Qorti ma taccettax is-sottomissjoni tas-socjeta` rikorrenti illi meta ssir allegazzjoni dwar irregolaritajiet serji, din ghandha dejjem tigi mistharga mill-Bord ta' Revizjoni. Kull Bord jew Tribunal ghandu obbligu jistharreg ilment biss meta jkun debitament adit, u jekk talba issir mhux fi zmien stabbilit fil-ligi, dak il-Bord jew Tribunal ma jkunx jista' jaghmel l-istharrig mitlub. It-termini ghal prezentata ta' appelli huma ta' ordni pubbliku u jridu jigu segwiti *ad ungwem* – ara **A.F. Ellis (Homes Décor) Limited v. Direttur Generali, Dipartiment tal-Kuntratti**, deciza minn din il-Qorti, Sede Inferjuri fit-23 ta' Jannar 2009.

Hu veru li l-Bord inghata l-opportunita` jiddeciedi bl-ekwita` u ghandu jqis l-allegazzjonijiet imressqa quddiemu, imma biex jaghmel dan il-Bord irid ikun

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legalment adit. Il-Bord ma jistax jinvestiga u jistharreg il-materja u jiehu '*1-passi mehtiega*', kif trid is-socjeta` rikorrenti, jekk it-talba ssirlu *fuori termine*.

Ghaldaqstant, ghar-ragunijiet premessi, tiddisponi mill-appell ta' B Outlets Limited billi tichad l-istess u tikkonferma d-decizjoni li ta l-Bord ta' Revizjoni dwar il-Kuntratti fis-6 ta' Frar 2015, bl-ispejjez jithallsu mis-socjeta` rikorrenti appellanti, u peress li tqis dan l-appell bhala wiehed fieragh u vessatorju, tikkundanna lill-appellant sabiex, ai termini tal-paragrafu 10 tat-Tariffa A tal-Kodici ta' Organizzazzjoni u Procedura Civili, ihallas ukoll bhala spejjez addizzjonali, is-somma ta' hames mitt Euro (€500) lir-Registratur tal-Qrati.

< Sentenza Finali >

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