

**FRANCISCO P. TESORERO, ANTONIO G. DIAZ, JESUS G. DUREZA,
PETITIONERS, VS. PONCIANO G. A. MATHAY, JAIME S. MEJIA, BOARD
OF ENERGY AND DAVAO LIGHT & #038; POWER COMPANY, INC.,
RESPONDEN...**

G.R. No. 69592. May 08, 1990

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari, with a prayer for a restraining order, seeking the annulment of the December 6, 1983 decision of the Board of Energy in BOE Case No. 82-684 approving the amount of P282,024,877.40 as the fair and reasonable value of the properties, assets and equipment in service as of October 9, 1981 of the Davao Light and Power Co., Inc.

Herein petitioners are residents of Davao City and consumers of electricity of herein private respondent Davao Light and Power Co., Inc. (DALIGHT, in short), the authorized operator of electric light, heat and power service in the City of Davao, as well as in the municipalities of Panabo, Sto. Tomas and Carmen, all in the province of Davao del Norte. Petitioners, in their own behalf and on behalf of the more or less 70,000 consumers of Davao City and its environs, opposed the inclusion by herein public respondent Board of Energy (BOE) of some properties of DALIGHT for reappraisals because they will have a direct bearing on the rates that respondent DALIGHT charges its customers to the effect that the higher the appraisal of the properties, the higher will be the base of the 12% allowable return; or otherwise stated, the higher the rates the consumers will have to pay.

As gathered from the records, the facts of this case are as follows:

On December 3, 1980, respondent DALIGHT filed with public respondent BOE an application for the approval of the sound value appraisal of its properties and equipment in service as of December 31, 1979 in the amount of P339,311,139.00. The appraisal was made by the Technical and Management Service (Phil.), Inc. (TAMSPHIL). Respondent BOE, after hearings, in an order dated March 13, 1981, constituted an inspection team to conduct ocular inspection/verification of the physical existence and ownership of all the properties and equipment of DALIGHT as listed the TAMSPHIL Appraisal Report. Thereafter, respondent BOE, in an order dated June 19, 1981, based on the submission of the inspection team, disapproved TAMSPHIL appraisal because: (1) TAMSPHIL was disqualified from making the appraisal, its President-Chairman being then a technical and engineering consultant of applicant DALIGHT; and (2) there were deficiencies and discrepancies in the appraisal report of such serious proportion as to affect the over-all integrity and reliability of the said report.

On June 24, 1982, DALIGHT again filed an application for the approval of the appraisal of its properties and equipment in service as of October 9, 1981 in the amount of P302,109,000.00 (Rollo, pp. 23-24). This time, the appraisal was conducted by Asian Appraisal Co., Inc. Said application was opposed by the petitioners (Rollo, pp. 27-33).

BOE constituted a team to conduct ocular examination/verification of DALIGHT's properties and equipment, including its books of accounts and other papers relative to the Appraisal Report of Asian Appraisal Co., Inc. The inspection team submitted its report on June 28, 1983.

Respondent BOE, in a decision dated December 6, 1983, approved the amount of P282,024,877.40 as the fair and reasonable value of DALIGHT's properties, assets and equipment in the service as of October 9, 1981 (*Ibid.*, pp. 86-97). Petitioners received the same on December 19, 1983.

On January 19, 1984, or seventeen (17) days after receipt of the said decision, petitioners filed a Motion for Reconsideration (*Ibid.*, pp. 98-112), but the same was denied in an order dated June 25, 1984 (*Ibid.*, p. 128). Apparently not having received the said order of June 25, 1984, petitioners in their motion of October 11, 1984 prayed that a hearing be conducted and/or a resolution be issued on their motion for reconsideration (*Ibid.*, pp. 125-126). Accordingly, respondent BOE issued an order dated October 31, 1984, informing petitioners that the motion had long been denied, furnishing them copies of the June 25, 1984 order (*Ibid.*, p. 128).

Hence, the instant petition.

On September 9, 1985, Davao City filed its Petition in Intervention (*Ibid.*, pp. 219-223). After all the required pleadings were filed, the First Division of this Court, in a resolution dated January 20, 1986, resolved to give due course to the petition and the petition for intervention (*Ibid.*, p. 354).

Thereafter, petitioners filed their memorandum, instead of a brief, on July 22, 1987 (*Ibid.*, pp. 403-429); while respondent DALIGHT and public respondent BOE filed a manifestation that they be allowed to adopt their respective comments as their respective briefs.

The issues raised by petitioners are:

1. Whether or not certiorari is the proper remedy in this case.
2. Whether or not the properties included in the appraisal should be excluded.

The instant petition is impressed with merit.

I

There is no question that certiorari is not the proper remedy in this case as PD No. 1206 creating BOE provides for an appeal to the Office of the President within seven (7) days from receipt of notice of its decision or orders. Thereafter, under the Interim Rules Implementing Sec. 9 of the Judiciary Reorganization Act of 1980, final decisions, orders, awards or resolutions of all quasi-judicial bodies other than those specifically excepted are reviewable by the Intermediate Appellate Court.

It will be noted that after receipt of the questioned decision of December 6, 1983 on December 19, 1983, petitioners filed a motion for reconsideration thereof only on January 5, 1984, or seventeen (17) days from receipt of the said decision, which therefore had already become final and executory. They received a copy of the order of June 25, 1984 and of October 31, 1984 informing them of said denial on December 3, 1984.

But while it is evident that there was error in the remedy resorted to, this Court in the broader interests of justice has in a number of cases given due course to a petition for certiorari, although the proper remedy is appeal especially where the equities warrant such recourse and considering that dismissals on technicalities are viewed with disapproval (*Marahay v. Melicon et al.*, G.R. L-44980, Feb. 6, 1990 citing *Perlas v. Concepcion*, 3 Phil. 559 [1916]; *Alfonso v. Yatco* 80 Phil. 407 [1948]).

Furthermore, it is well settled that litigations should, as much as possible, be decided on their merits and not on technicalities (*Galdo v. Rosete*, 84 SCRA 239, 242-243 [1978]); that every party-litigant must be afforded the amplest opportunity for the proper and just determination of his case, free from unacceptable plea of technicalities (*Heirs of Ceferino Morales v. Court of Appeals*, 67 SCRA 304, 310 [1975]); that this Court, in the exercise of equity jurisdiction, decided to disregard technicalities in order to resolve the case on its merits based on evidence (*St. Peter Memorial Park, Inc., et al. v. Cleofas*, 121 SCRA 287 [1983]; *Helmuth, Jr. v. People of the Philippines*, 112 SCRA 573 [1982]).

A careful review of the records show that this case will not only affect herein petitioners who on some points have a good cause of action but also the more or less 70,000 consumers in Davao City and its environs. Hence, it appears more appropriate to consider the petition on its merits rather than to dismiss it on technicalities.

II

There appears to be no dispute on the generally accepted principle that in order to comply with the legal mandate that electric utilities must render safe, reliable and efficient service to the general public which in the process would require tremendous expenditure of working funds, a revaluation of assets to a more realistic level must be allowed to enable said utilities to accumulate funds with which to replace their obsolescent assets (*Rollo*, p. 96).

Petitioners take exceptions, however, to the fact that the assailed decision approved appraisals consisting of:

- (1) Properties of respondent DALIGHT which by legal mandate cannot be replaced anymore;
- (2) Properties which have no bearing on the production/distribution of power to consumers;
- (3) Properties that are not owned by DALIGHT;
- (4) Properties which by their nature are not subject to appraisal. (*Rollo*, p. 11)

Verily, it is well settled that this Court cannot substitute its judgment or discretion for that of the BOE whose decisions and determinations particularly on matters of facts are entitled to great weight and respect.

But it is equally accepted that exhaustion of administrative remedies before resort to judicial bodies is not an absolute rule. It admits of exception, among which is that where the question litigated upon is a purely legal one, the rule does not apply. (*Bagatsing v. Ramirez* 74 SCRA 307 [1976]; *Malabanan v. Ramento* 129 SCRA 359 [1984]; *Limorco v. Board of Administrations, PVAO*, 133 SCRA 43 [1984]; *National Housing Authority v. C.A.* 121 SCRA 777 [1983]). It is likewise true that while administrative determination on questions of law is persuasive on courts and carries with it a strong presumption of correctness, nonetheless, the interpretation and application of laws is the courts' prerogative. (*Cadwallader et al. v. Abedela*, 98 SCRA 123 [1980]; *Philex Mining Corp. v. Zaldiva*, 43 SCRA 479 [1972]).

Equally important is the fact that the rule may and should be relaxed when its application may cause great and irreparable damage (*Bagatsing v. Ramirez*, *supra*).

As earlier pointed out, the assailed decision may affect more or less 70,000 consumers in Davao City and its environs.

A careful scrutiny of the records shows that the bone of contention in this case is not the factual determination of the appraisals of the properties involved and the rates fixed by reason thereof, but the legal determination of the properties covered by the reappraisal under laws pertinent thereto.

1. Under Presidential Decree No. 40 it is expressly provided that the setting up of transmission lines grids and the

construction of associated generation facilities shall be the responsibility of the National Power Corporation as the authorized implementing agency of the State. In the same manner plant additions necessary to meet the increase in power demand in the area covered thereby shall be constructed and owned by the NPC.

Accordingly, there is no dispute that DALIGHT is no longer allowed to replace its generators. In fact, the obligation to pay for four (4) generators was assumed by NPC and they were just leased to DALIGHT.

On the other hand, the claim of DALIGHT that it was advised by NPC to retain its generators as standby units, appears to be a mere temporary measure when there was only one line connecting the Agus Grid in Iligan City to Davao City passing through dangerous rebel infested territories, then in constant danger of sabotage. Presently, however, there are two more lines passing safe areas which precluded the danger of Davao City from being cut off from the Agno Grid thru sabotage (Rollo, pp. 75-77).

As DALIGHT is precluded by PD No. 40 from replacing these assets said generators with an approved sound value of P153,504,500.00 should have been excluded from the appraisal.

Even granting that said generators are still being used and as such subject to repairs and maintenance costs, still they are operating expenses deductible from current income and have nothing to do with appraisals (Rollo, p. 413).

2. Properties objected to as having no bearing to the production/distribution of power to consumers are: the administration building appraised at P3,383,110.00 and an airplane with a sound value of P75,000.00.

It was found among other things that aside from the fact that a portion of the administration building is being rented to others, it had been substantially torn apart leaving only the foundation and the main posts and completely rebuilt with a very different design. Thereafter, the new costs of construction were added to the appraisal of the old building, thereby inflating the value of the same beyond reasonable valuations (Rollo, p. 420).

In like manner, the regular use of the airplane allegedly to observe watersheds which cover vast stretches of forest was not established. Instead the BOE Special Investigation Team found the airplane in Cebu City which has no connection to power generation and the only licensed pilot of Davao Light is its president who is not expected to conduct dangerous reconnaissance flights himself (Rollo, pp. 420-421).

Accordingly, 40% of the valuation of the building which is devoted to lease and not to the operation of electricity should be deducted from the total valuation, that is, P3,383,110.00 - 1,353,244.00 (representing 40% of total valuation) = P2,029,866.00, the sound value appraisal of DALIGHT's property including the construction cost in remodelling the same.

On the other hand, the appraised value of the airplane which is not being used in the operation of electricity should be excluded in the appraisal.

3. Properties allegedly not owned by respondent DALIGHT are: (a) improvements constructed on the Talomo Hydro Power System which is leased from NPC and (b) improvements constructed under the Digos and Parrigan Projects Agreement, all of which are permanent improvements which cannot be removed even after the expiration of the lease without violation of the lease agreement (Rollo, pp. 422-423).

In the same manner, the sound value of these improvements should have been excluded from the appraisal of DALIGHT's properties.

4. Properties which allegedly by their nature are not subject to appraisal are motor vehicles which fall under the "Employees Car Plan". While the employer retains the registration of the same in its name, it is only a form of alien against said vehicle should the employee opt to abscond before the vehicle is fully paid. That the vehicle has

been sold to the employees even though conditionally and for only one half of the purchase price conclusively proves that the vehicles are no longer owned by the employer.

Still further, should the employment of the employees concerned be terminated before all installments are fully paid, the vehicles will be taken by the employer and all installments paid shall be considered rentals per agreement. In that eventuality, said vehicle will neither qualify for appraisal because the same have been used to earn rentals and not for power generation nor distribution.

In resume, the amounts to be deducted from the approved amount of P282,024,877.40 which is the appraised sound value of DALIGHT's properties, assets and equipment, are as follows:

Amount Approved by BOE P282,024,877.40

Deductions:

(a) For Power Plants - P153,504,500.00

(b) 40% value of Adm. Building - 1,353,244.00

(c) Value of Airplane - 75,000.00

(d) Value of Permanent Improvements:

Digos and Parrigan Project - 2,455,900.00

Talomo Hydropower System - 2,128,500.00

(e) Vehicles purchased under Car Plan - 332,300.00

Total Deductions 159,849,444.00

Balance P122,175,433.40

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PREMISES CONSIDERED, the December 6, 1983 decision of the Board of Energy is hereby MODIFIED by approving only the sum of P122,175,433.40 as the fair and reasonable value of the properties, assets and equipment in service as of October 9, 1981 of DALIGHT.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

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