

**CITY OF DAVAO, REPRESENTED BY HON. ZAFIRO L. RESPICIO,
OFFICER-IN-CHARGE, OFFICE OF THE CITY MAYOR, AND
FRANCISCO TESORERO, PETITIONERS, VS. BOARD OF ENERGY AND
DAVAO LIGHT AND ...**

G.R. No. 75253. June 08, 1990

Ponente: PARAS, J.

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PARAS, J.:

The only issue proffered by the petition is whether or not the Board of Energy[1] (BOE) committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying petitioners' request for transfer of venue from Manila to Davao City.

The provision of law pertinent to this petition is Section 10 of the Public Service Act (C.A. No. 146), to wit:

"The Commission (now BOE) shall have its office in the City of Manila at such place as may be designated, and may hold hearings on any proceedings at such times and places, within the Philippines, as it may provide by order in writing x x x"

It appears that three applications were filed by respondent Davao Light and Power Co., Inc. (DALIGHT) before the BOE. There are:

- "1. Application for the approval of the sound value appraisal of its properties and equipment as of December 14, 1984, which was docketed as BOE Case No. 85-103.
2. Application for approval of the Contract of Sale of two (2) diesel generating sets together with all their standard accessories, entered into with the National Power Corporation, which was docketed as BOE Case No. 86-68;
3. Application for authority to increase its capital stocks from 80 Million Pesos to 110 Million Pesos, which was docketed as BOE Case No. 80-159."

(pp. 1-2, Comment; pp. 48-49, Rollo)

On November 22, 25 and 26, 1985, BOE received various telegrams from Antonio Diaz, petitioner Francisco Tesorero, Davao City Vice Mayor Cornelio Maskarino and Rey Teves of Konsumo Davao which among others, requested that the hearing be held in Davao City since the applicant and the oppositors come from Davao City.

In an order dated November 28, 1985, BOE denied oppositors request for transfer of venue citing as reason the previous similar actions it had taken on cases involving other electric utilities where oppositors therein had also made similar requests for change of venue.

A motion dated November 29, 1985 was likewise filed with BOE by Edmundo Madrazo, Jesus Dureza, Ely Bretana, Francisco Tesorero, Antonio Diaz and Rey Teves praying for the postponement of the hearing because of the difficulty to obtain plane bookings and requesting reconsideration of the order denying their request for

transfer of venue.

On December 27, 1985, BOE received from the Davao City Legal Officer a "Motion To Transfer Venue of Hearing" dated December 11, 1985.

At the hearing of January 9, 1986, BOE received two (2) separate telegrams from herein petitioners requesting postponement of the hearing as Vice Mayor Maskarino had made a personal appeal to the President for the transfer of venue to Davao City.

On February 13, 1986, BOE issued an Order denying again oppositors' request for transfer of venue.

On June 10, 1986, BOE received from petitioner Davao City, through its OIC, Zafiro Respicio, a telegram requesting transfer of venue of hearings for the reason that all oppositors are Davao City residents. The same was denied by BOE in a reply telegram of June 13, 1986.

On June 23, 1986, respondent BOE issued the Order, now in question, which merely reiterated its previous denials of oppositors' requests for change of venue.

On July 28, 1986, petitioners filed the instant petition for certiorari and mandamus.

Petitioner contends that the BOE acted with grave abuse of discretion amounting to lack of jurisdiction in denying the said request for a transfer of venue, without even giving any cogent reason why it has to prefer Metro Manila as the venue of the said cases considering that, Davao City is the place where the applicant Davao Light and Power Company and the petitioners have their respective place of business or office, and, therefore, physical and monetary inconvenience can be tremendously avoided by the transfer of said venue, while on the other hand, respondent BOE has all the facilities to move to Davao City for hearing considering that it is a governmental agency with all the facilities it can avail which the petitioners can ill-afford, hence, the necessity of a transfer of venue becomes practical, convenient, economical and reasonable under the prevailing circumstances.

The petition is unmeritorious.

The BOE has not acted with grave abuse of discretion in holding the hearings of the three DALIGHT cases in the confines of the BOE office in Manila. Such action by the board is well-within the sphere of its discretion. In addition, in denying petitioners' request for change of venue, respondent BOE cited as reasons therefor the previous similar actions it had taken in respect to cases which involved other electric power utilities where the oppositors therein had likewise submitted similar requests for transfer of venue. The utilities aforementioned include Cagayan Electric Light and Power Co., Inc. (CEPALCO), Visayan Electric Company (VECO) and Panay Electric Company (PECO), whose places of business are located in Cagayan de Oro City, Cebu City and Iloilo City, respectively.

Besides in a similar case filed in this Court, docketed as G.R. No. 71322, entitled John H. Osmena vs. BOE, the petition therein was filed for the transfer of the venue by VECO from the office of BOE in Pasig, Metro Manila to Cebu City. In a minute resolution dated December 16, 1985, this Court dismissed said petition for lack of merit.

Petitioners however are not left without any other recourse. As what they have done in the past, they can present evidence in support of their opposition in a less expensive and burdensome way if they avail themselves of the provisions of Section 32 of the Public Service Act or Rule 24 of the Rules of Court. Under said rules, petitioners' evidence may be received in Davao City itself, through depositions taken before the Clerk of Court of any Regional Trial Court or Metropolitan Trial Court in Davao City.

PREMISES CONSIDERED, the instant petition is hereby DISMISSED for lack of merit.

SO ORDERED.

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

[1] The Board of Energy was created by P.D. No. 1206, dated October 6, 1977.

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