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SECOND DIVISION

[G.R. No. L-41745. August 28, 1985]

MUNICIPALITY OF DAET, represented by the Municipal Vice-Mayor Hon. ELEODORO BICIERRO, *petitioner, vs.* **HIDALGO ENTERPRISES, INC., and the CHAIRMAN, BOARD OF POWER AND WATERWORKS,** *respondents.*

SYLLABUS

1. **CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; DENIAL, NOT A CASE OF.**— We find neither factual nor legal basis for petitioner's charge that it was denied due process. Scrutiny of the records shows that petitioner was afforded every opportunity to present its case as it in fact submitted evidence in support of its opposition to Hidalgo's application for increase in rates. Apart from the deposition of its eight witnesses. petitioner had presented in evidence no less than 26 documents.

2. **ID.; STATUTES; CONSTRUCTION; COMMONWEALTH ACT 325; THERE IS NOTHING IN THE PHRASEOLOGY OF SECTION 2 THEREOF THAT VALUATION OF THE AUDITOR GENERAL IS MANDATORY BEFORE THE BOARD OF POWER AND WATERWORKS MAY INCREASE ITS CHARGES.**— Without discounting the fact that public interest may be better served with a GAO audit of the applicant's valuation of its properties and equipment, we nevertheless find nothing in the phraseology of the above-quoted provision that makes such audit mandatory or obligatory. A GAO valuation is merely advisory.

D E C I S I O N

ESCOLIN, *J.*:

Assailed in this petition for review is the decision of the respondent Board of Power and Waterworks in Case No. 74-171, entitled "*Hidalgo Enterprises, Inc., applicant vs.*

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Municipality of Daet," *oppositor*," the dispositive portion of which reads:

"WHEREFORE, x x x this Board believes and so holds that applicant may be, as it is hereby authorized to increase its present rates by 55% across-the-board except the flat rate schedule, and that in accordance with the concessions previously agreed upon by applicant, minimum rate schedule of residential consumers shall be ₱5.45 per month on a minimum of 14 KWH regardless of the connected load; that all small stores with a connected load of 200 watts and were formerly classified as commercial rate customers shall now be classified as residential flat rate customers, thus exempting them from the demand charge and that a grace period of five (5) days shall be given to every customer who is due for disconnection.

"The Commission on Audit is hereby requested to cause an audit and examination of applicant's books and other records of accounts for such period of twelve (12) consecutive months as it may deem proper and to furnish this board with a copy of the audit report thereon upon its completion.

"This decision takes effect immediately and shall become final thirty (30) days from the date of notice to the parties, but shall not have any retroactive force or effect." [Annex "E", Petition, pp. 43-44, *Rollo*].

The antecedent facts are the following:

On August 4, 1974, respondent Hidalgo Enterprises, Inc., Hidalgo for short, an operator of electrical system in seven [7] municipalities[1] of Camarines Norte, filed an application with the Board of Power and Waterworks for authority to charge an across-the-board increase of 70% in its schedule of rates. On September 4, 1974, the Board issued an *ex parte* order, allowing a 65% across-the-board increase in rates. In said order, the Board further requested the Government Auditing Office [GAO] to conduct an audit of Hidalgo's books of accounts. Upon application by petitioner Municipality of Daet, however, this Court issued a temporary restraining order enjoining the enforcement of the provisional authority granted to Hidalgo.[2]

[1] The seven municipalities are Daet, Jose Panganiban, Basug, Talisay, Vinzons, Mercedes and Labo.

[2] See *Municipality of Daet v. Hidalgo Enterprises, Inc.*, G.R. L-39792, Dec. 30, 1974.

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Thereafter, hearing on the merits was conducted. Hidalgo presented its evidence before the hearing officer of the respondent Board, Atty. Paulino Gueco, at the Board's Quezon City offices, while the depositions of the petitioners' witnesses were taken before Municipal Judge Gil Fernandez of Daet, Camarines Norte. Upon termination of the deposition proceedings on May 18, 1975, the transcript of stenographic notes, consisting of 359 pages, was forthwith transmitted to the respondent Board.

On June 6, 1975, petitioner filed with the Board a motion for "appointment of commissioners to make an inventory of Hidalgo's equipment in service." It was alleged in the motion that such inventory was necessary in order to determine the depreciated value of said equipment, on the basis of which the allowable rate of return would be computed. The motion was heard on the same day before the chairman of the respondent Board.

In the meantime, Hidalgo filed a motion for the issuance of provisional authority to charge revised schedule of rates, which motion was opposed by petitioner. At the hearing of this incident on August 11, 1975, the parties were directed to file their respective memoranda in support of their respective positions. At said hearing, petitioner further reminded the Board about the pendency of its June 6, 1975 motion for appointment of commissioners. On August 18, 1975, petitioner submitted its memorandum "subject to the consideration and resolution of this board on the motion for appointment of commissioners to make an inventory x x x and also the audit report of GAO," with the reservation to submit a supplemental memorandum.

On September 1, 1975, the Board handed down the questioned decision. To petitioner's mind, the respondent Board acted with grave abuse of discretion amounting to a denial of due process because it rendered said decision without prior resolution of petitioner's June 6, 1975 motion for appointment of commissioners, and without awaiting the GAO audit report on the respondent Hidalgo's books and records of accounts. Hence, the instant petition.

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[3] Annex D of Petition, p. 20, *Rollo*.

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The fundamental principle emphasized by this Court in *Serrano v. Public Service Commission*[4] is that while the Public Service Commission [predecessor of herein public respondent] is not a court, but an administrative tribunal possessed of judicial powers, and as such "free from the rigidity of certain procedural requirements," it cannot in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process.

In the case at bar, we find neither factual nor legal basis for petitioner's charge that it was denied due process. Scrutiny of the records shows that petitioner was afforded every opportunity to present its case as it in fact submitted evidence in support of its opposition to Hidalgo's application for increase in rates. Apart from the deposition of its eight witnesses, petitioner had presented in evidence no less than 26 documents.

That the respondent board had properly evaluated and weighed such evidence submitted before it is apparent from the following portion of the questioned decision:

"The evidence of applicant centered mainly on its financial statement to show its financial position and predicament and to justify the need for an upward revision of its rates to improve its revenue. On the other hand, oppositor presented by deposition before the Municipal Judge of Daet, eight witnesses in the persons of Mr. August Pisus, a former employee of applicant who testified as to the number of generating units of applicant and that one of the total five units in Daet was not operating; Engr. Basilio Parale, in charge of the provincial motor pool of Camarines Norte who testified that as member of the provincial electric cooperative team he helped gather data for the National Electrification Administration; Mrs. Norita S. Posadas, field examiner, NEA, Manila, who brought NEA records pertaining to applicant; Mr. Leon Madi, president of the association of *barangays* of Daet, who stated that the *barangays* were withdrawing their opposition to the rate increase; Fiscal Augusto S. Zabala, assistant provincial fiscal of Camarines Norte, who testified that as counsel for the Municipality of Daet he discovered from official records in Manila that applicant is a family corporation; and that Mr. Luis

[4] 24 SCRA 867.

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Hidalgo, one of the stockholders of applicant has invested in some other corporations to show that applicant is not losing in its electric service business; Mr. Florentino Y. Apo, *barangay* chairman of Barangay 8, who stated that inspite of the resolution of the *barangays* to interpose no opposition to the rate increase due to certain concessions granted by applicant, they were still against the rate increase; Mr. Cesar Grajeda, provincial hospital administrative officer who testified about the request of the hospital administration to except the provincial hospital from paying demand charges, which request was however not granted, and that he noticed brownouts in Daet; and lastly Mr. Ernesto B. de Jesus, a former accountant-auditor of applicant who testified that there is no justification to increase applicant's schedule of rates." [Annex "E", Petition, pp. 40-41, *Rollo*]

After evaluating the evidence adduced by the parties, the respondent board upheld the validity of Hidalgo's application. It rationalized its posture thus:

"From the testimonial and documentary evidence submitted by oppositor, the Board finds no evidence of moment sufficient to justify a denial of this application. The testimonies of oppositor's witnesses though candid, fail to rebut or negate the need to revise upward applicant's present schedule of rates. In addition, the Board takes judicial notice of the several increases in the prices of fuel oil, bunker fuel, lubricants and other oil products; that the cost of machinery spare parts has likewise increased tremendously; that there have been a general increase in the cost of labor due to the implementation of the Minimum Wage Law and the rise in the cost of living index; and that the value of the Philippine peso *vis a vis* the American dollar has also substantially decreased.

"The Board is also aware of the fact that as a consequence of price increases, a corresponding increase in cost of operations of public utilities has inevitably resulted and unless relief is granted in the form of reasonable and realistic increases in rates, their service will deteriorate to the prejudice of the general public.

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"An analysis of applicant's Audited Financial Statements for a 6-month period ending June 30, 1974 shows that on an invested capital entitled to return of ₱3,333,481.86, it sustained a deficiency revenue by rates amounting to ₱590,346.62 which is about 70.27% to the actual

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revenue by rates amounting to ₱840,146.08 and incurred a net operating loss of ₱390,337.71 which is equivalent to a rate of return of negative 11.70% on invested capital.

"The analysis further shows that for the whole year period ending December 30, 1974, applicant, with a total invested capital entitled to return of ₱3,335,568.03, likewise suffered a deficiency revenue by rates amounting to ₱1,167,238.58 which is about 54.24% to the actual revenue by rates of ₱2,152,008.14 and incurred a net operating loss of ₱766,970.42 which is equivalent to a rate of return of negative 22.99% on invested capital.

"Based on the foregoing analysis and findings, an increase by 55% across-the-board on applicant's authorized rate appears to be just, reasonable and sufficient to give applicant its needed financial relief." [*Ibid.*, pp. 41-43, *Rollo*]

Thus, the decision to grant respondent Hidalgo a 55% across-the-board increase in rates was based on the financial condition of said respondent taken in the context of the economic milieu obtaining at the time. It is further noted that in its decision, the respondent Board tempered the rates of increase to consumers by providing, among other things, a reduced grant of 55% across-the-board increase, a minimum rate for residential consumers, a reclassification of small stores with connected loads of 200 watts from commercial to residential flat rate consumers, and a grace period of 5 days to every customer whose electric service is due for disconnection. Such decision, to our mind, indicates that the respondent board has satisfactorily discharged its primary function of fixing a rate based on "conditions which are fair and reasonable both to the public utility and the public itself."[5]

Petitioner contends however that the board's decision should be set aside because the financial statement submitted by Hidalgo was without the GAO audit. In support of the thesis, petitioner invokes the following provision of Section 2 of Commonwealth Act 325:

"In acting upon any proceedings, regarding the approval of basic rates of amendments of existing rates of any public service, the

[5] *PLDT v. Medina*, 20 SCRA 659.

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Auditor General shall assign auditors to assist the Public Service Commission and shall furnish such financial data as may be required by the Public Service Commission."

Without discounting the fact that public interest may be better served with a GAO audit of the applicant's valuation of its properties and equipment, we nevertheless find nothing in the phraseology of the above-quoted provision that makes such audit mandatory or obligatory. A GAO valuation is merely advisory. It is neither final nor binding, as illustrated in *MERALCO v. Public Service Commission*,[6] where this Court upheld the decision of the Public Service Commission to fix rates on the basis of Meralco's own valuation of its properties, rather than on the assessment made by the GAO. Upon this premise, the appraisal made by respondent Hidalgo, which the respondent Board found to be fair and reasonable, can serve as proper basis for fixing the allowable rate of return and the corresponding increase in its charges.

In determining the rates on the basis of the reappraised value of the properties of respondent Hidalgo, the Board employed the 'present cost or market value formula,' a formula which this Court has consistently applied in similar cases.[7]

WHEREFORE, this petition is hereby denied. No costs.

SO ORDERED.

Concepcion Jr., (Actg. Chairman), De la Fuente,[*] *Cuevas,* and *Alampay, JJ.*, concur.

Aquino (Chairman) and *Abad Santos, JJ.*, are on leave.

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[6] 18 SCRA 649.

[7] *Metropolitan Water District v. Public Service Commission*, 58 Phil. 397; *Municipality of Pagsanjan v. Cacho and Hidalgo Electric*, G.R. No. 36544 (1933); *Phil. Railways Co. v. Asturias Sugar Central, Inc.*, 72 Phil. 454; *Halili v. Ice and Cold Storage Industries of the Philippines*, 77 Phil. 823; *Manila Electric Co. v. Public Service Commission*, 18 SCRA 651; *Republic v. Medina*, 41 SCRA 644.

[*] Designated to sit in the Second Division pursuant to Special Order No. 325 of the Chief Justice dated July 31, 1985.