

**MANILA YELLOW TAXICAB CO., INC., PETITIONER AND APPELLANT,
VS. FRANCISCO JAVIER, RESPONDENT AND APPELLEE.***G.R. No. 38190. September 15, 1933*

Ponente: IMPERIAL, J.

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This is another appeal taken by the Manila Yellow Taxicab Co., Inc., from the decision of the Public Service Commission granting Francisco Javier a certificate to operate midget taxicabs in the City of Manila, its suburbs, and in the neighboring provinces of Bulacan, Rizal and Cavite, on a tariff rate of ten (10) and five (5) centavos. The dispositive part of the decision reads as follows:

"In view of the foregoing, and after a careful consideration of the evidence, the commission, after overruling all the oppositions presented in this case, arrived at the conclusion that the certificate of public convenience applied for, should be granted and that its issuance, upon the conditions hereinafter set forth, will adequately promote the public interests as required in par. (i) of section 15 of Act No. 3108. Wherefore, it is hereby ordered that the corresponding certificate of public convenience be issued upon payment of the fees fixed by law, subject to the following conditions:

"1. That Francisco Javier shall operate a public transportation service consisting of 25 Austin cars (Midget Motor Propelled Vehicles) known as taxicabs, having a capacity of four (4) passengers each, including driver, without any fixed route or terminal within the City of Manila and between the City of Manila and adjacent towns in the provinces of Bulacan, Rizal and Cavite, whenever the service so demands. * * *"

The applicant-appellee instituted case No. 29712 praying that he be permitted to operate small Austin cars known as "Midget Taxicabs", in the City of Manila, its suburbs, and in the neighboring provinces. The appellant, Manila Yellow Taxicab Co., Inc., and Aero Taxicab Co., Inc., E. Vesnan, the Municipal Board of the City of Manila, Pasay Transportation Co., Julio Danon and Fausto Barredo, filed their oppositions to the application. After hearing, the commission rendered its decision from which only the first two oppositors appealed. The opposition of Aero Taxicab Co., Inc., however, was dismissed upon motion of the appellee for failure of the said oppositor to file a motion for re-consideration or new trial during the pendency of the case in the Public Service Commission.

The judgment appealed from is signed by two of the commissioners, from which the other commissioner dissented. The facts established herein and considered by this court as controlling for the purposes of this decision are summarized in the aforesaid appealed decision as follows:

"From the foregoing, it appears that the proposed service, if authorized, will adequately promote the public interests in a proper and suitable manner, for it will not only answer a pressing demand of the residents of Manila, especially those of moderate means who cannot afford the present rates charged by the existing' taxicabs, garage and PU cars, but at the same time, will modernize our mode of transportation in the city by the consequent gradual elimination of carromatas and carretelas. Manila, with its growing importance as a trade center not only of the Archipelago but of the Far East, the progress made by its commerce and industry, and the increase in number of its educational institutions in the past ten years, has attracted and continues to attract

people from all parts of the Archipelago, thousands and thousands of students, laborers and merchants who have contributed to the rapid urbanization of the different corners of the City of Manila which, ten years ago, were vacant, muddy and swampy lots and have now been transformed into well populated suburbs. All of these have contributed to make the traffic problem in the city more difficult and more complex, and the operation of the proposed service within the city will doubtlessly help to modernize our transportation system and solve the difficult problems of regulating and relieving traffic congestion in the City of Manila."

The appellant assigns the following alleged errors:

"I. The Public Service Commission erred in granting a certificate of public convenience to the applicant, Francisco Javier, because:

"(a) It was not shown that the present taxicab service in the City of Manila is inadequate, insufficient or unsatisfactory;

"(b) The proposed business will constitute a ruinous competition with the business of the established prior operators, Manila Yellow Taxicab Co., Inc., and Aero Taxicab Co., Inc.;

"(c) It was not shown that the public interests will be promoted in a proper and suitable manner by granting the certificate; and

"(d) If the commission believed that public convenience requires the operation of midget taxicabs, it should have first required the present operators, Manila Yellow Taxicab Co., Inc., and Aero Taxicab Co., Inc., to operate such midget taxicabs before giving a certificate to a newcomer.

"II. The Public Service Commission erred in permitting Judge Vicente de Vera to take part in the decision of this case.

"III. The Public Service Commission erred in denying the motion for reconsideration and rehearing."

With regard to the first assignment of error, we agree with the applicant that this case is different from the others which we have heretofore had occasion to decide, in that herein it is sought to operate midget taxicabs whose tariff rates are much lower. We do not agree, however, as to the merits of the case. From the voluminous evidence, which we have had the opportunity to review, there can be no other inference than that the residents of the City of Manila and adjacent provinces would be materially benefited by the new service inaugurated and actually operated by the herein applicant-appellee. The service thus established has filled a need long felt, particularly by the masses who cannot afford to pay the rates charged by the larger motor vehicles engaged in the same service. We do not agree with the theory advanced, that it is necessary to adopt the new service in order to eliminate horse-drawn vehicles; nevertheless, if this be the result, it should be accepted as a tribute to progress and to the inevitable modernization of transportation systems.

It is but natural that these midget taxicabs should charge lower rates than the larger taxicabs, which is only logical inasmuch as the former afford the passengers less comfort and are relatively cheaper than the latter. But, at any rate, such reduction in rates should not be viewed as an element engendering ruinous competition inasmuch as the public is intelligent and may use its own discretion in the selection of the quality and cost of the transportation it cares to use.

There is no basis of comparison between the service rendered by midget cars and that rendered by the taxicabs of greater capacity and, for this reason, the operators of the latter kind of cars have no right to demand that they be given an opportunity to increase their equipment for the purpose of warding off an alleged ruinous competition which does not actually exist.

The foregoing considerations, in our opinion, refute the arguments set forth in support of the first assignment of

error.

As we have already stated in the case of Manila Yellow Taxicab Co. and Aero Taxicab Co. vs. Barredo, G. R. No. 38286,[1] Judge Vicente de Vera's participation in the case before us can in nowise be construed as illegal or intended for illicit purposes. It is presumed that he has conscientiously examined all the evidence adduced herein before preparing the decision which he signed, and under such circumstances, we do not see anything anomalous in his action.

The decision being in accordance with law, and reasonably supported by the evidence, the commission acted correctly in denying the motion for reconsideration and new trial filed by the appellant.

The judgment appealed from is hereby affirmed, with the costs against the oppositor-appellant. So ordered.

Malcolm, Villa-Real, Abad Santos, and Hull, JJ., concur.

[1] See next case.

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