

**MANILA YELLOW TAXICAB CO., INC., AND ACRO TAXICAB CO., INC.,
PETITIONERS AND APPELLANTS, VS. FAUSTO BARREDO (MALATE
TAXICAB), RESPONDENT AND APPELLEE.**

G.R. No. 38286. September 15, 1933

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This is an appeal taken to review the decision rendered by the Public Service Commission on July 28, 1932, the dispositive part of which reads as follows:

"Wherefore, finding that public necessity and convenience demand the conversion of the garage service in question into a taxicab service as sought by the petitioner herein, in accordance with section 15, paragraph (i), of Act No. 3108, as amended, we hereby DENY the oppositions filed against the application under consideration; GRANT the permission applied for; and ORDER that, upon payment of the required fees, the corresponding certificate of public convenience be issued to the herein applicant, subject to the following conditions:

"1. That the applicant, Fausto Barredo, shall operate under the firm name 'Malate Taxicab', employing his 45 Chevrolet Touring Cars, 2 Dodge Brothers Touring Cars and 10 Plymouth Sedans, or a total of 57 cars, under the denomination, 'taxicab', without a fixed route or terminal within the City of Manila, and between the City of Manila and any other point within the Island of Luzon accessible by roads or public highways, whenever the service so demands; * * *."

Fausto Barredo, the herein applicant-appellee, filed an application docketed as case No. 30186, praying for authorization to convert into taxicabs the 57 automobiles he was operating in connection with his business known as "Malate Garage", with the right to employ them in said service within the City of Manila and its suburbs, and in the provinces of Luzon having suitable roads for such motor traffic. He likewise prayed that he be authorized to increase his equipment up to one hundred (100) taxicabs. The herein appellants, Manila Yellow Taxicab Co., Inc., and Aero Taxicab Co., Inc., filed oppositions to the application in question. In general terms, the grounds for the aforesaid oppositions consisted in that the opponents were already taxicab operators; that public necessity and convenience would not be served by the granting of the new certificate applied for; that the opponents were rendering an efficient and satisfactory service; and that they were ready to increase the number of taxicabs they were then operating to the limit authorized them if such step were necessary and convenient in order to better serve the public and promote the interests thereof. After due hearing during which the parties presented all the necessary evidence including that adduced in the case of Julio Danon, Record No. 29473, the Public Service Commission rendered its decision, the dispositive part of which has been quoted at the beginning of this decision. The municipal board of the City of Manila also filed its opposition to the application but the same need not be considered in view of the fact that it did not appeal.

The Acro Taxicab Co., Inc., has joined the Manila Yellow Taxicab Co., Inc., in its appeal to this court, relying on the same brief, the assignments of error, and the arguments of the latter. The Manila Yellow Taxicab Co., Inc.,

assigns the following alleged errors in the decision appealed from:

"(1) The Public Service Commission erred in granting a certificate of public convenience to Fausto Barredo to operate a taxicab service in the City of Manila and surrounding towns where there are already two certificated taxicab operators in the same field and it was not shown that the service rendered by them is inadequate, insufficient and unsatisfactory.

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

"(3) The Public Service Commission erred in dictating the decision prior to the expiration of the 20 days allowed the parties for filing memoranda.

"(4) The Public Service Commission erred in denying our motion for reopening and rehearing of the case."

In its decision, the commission stated, among other things, that from the evidence presented and from that adduced in the case of Danon, it may be inferred that there existed in the City of Manila, its suburbs and the surrounding provinces, sufficient public demand for the taxicab service sought by the petitioner-appellee, and that in its opinion, public necessity and convenience would be better served if the 57 garage cars were allowed to be operated as taxicabs. It also added that if Danon was granted such right under the identical facts, there was absolutely no good reason to justify the denial of the same right to the appellee, for to do so would be tantamount to discriminatory treatment. We have reviewed the evidence presented in this case and are convinced that the foregoing conclusions are sufficiently supported thereby. Hence, it is held that the first assignment of error is unfounded.

But the appellants contend that the decision appealed from is incomprehensible and illogical for the reason that it is based entirely on the authorization granted Danon to convert his garage cars into taxicabs; and insist that from a legal point of view, the existence of a prior operator in the same territory is precisely a cause or ground for denying the same kind of service to another operator. We are of the opinion that the appellant failed to expound correctly the reasoning set forth by the commission. What it said and intended to convey was that if Danon was granted permission to convert his garage cars into taxicabs, there was no just and sane reason for denying the same privilege to Barredo, inasmuch as both were similarly situated and the same facts have been established by the same evidence presented in both cases.

In the second assignment of error, the intervention of Judge Vicente de Vera in the case and particularly the circumstance of his having penned the decision appealed from, are insistently impugned. It is contended that the said judge could not legally participate in the deliberation of the case in question on the ground that the first and only time he acted therein was during the last hearing thereof which scarcely lasted for one hour and a half, and during which only one or two witnesses testified. It is also insisted that this procedure is contrary to the provisions of Act No. 3844 which requires that the questions involved must be heard and decided by at least two commissioners who should take part in the direction of the same. Judge De Vera was designated to act in the Public Service Commission during the absence of one of the members thereof, who was on vacation leave. Such designation was perfectly valid and we do not hesitate to hold that his acts were likewise legal and proper. The fact that he had not heard the majority of the witnesses testify does not constitute a ground for his disqualification inasmuch as he could have examined, as it is to be presumed, the testimony of the witnesses, which has been accurately transcribed.

The third assignment of error is based on the alleged ground that the commission rendered its decision before the expiration of the period granted the attorneys for the filing of their respective memoranda. Granting that this was an irregularity, we are, nevertheless, of the opinion that the same does not constitute an error sufficient to justify a

modification or reversal of the decision in question. Undoubtedly, it was due to lack of time in view of the fact that judicial vacations were nearing an end and Judge De Vera had to return to his district.

The last assignment of error being merely a matter of form, does not need further consideration.

The decision appealed from is hereby affirmed, with costs against the appellants. So ordered.

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

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