

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6575 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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BHUDARSINH MOTIBHAI

Versus

G S R T CORPN

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Appearance:

1. Special Civil Application No. 6575 of 1999  
MR NILESH A PANDYA for Petitioner No. 1  
MR KS JHAVERI for Respondent No. 1-3
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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 29/06/2001

#### ORAL JUDGEMENT

Rule. With the consent of the learned counsel for the parties, the petition is taken up for final disposal today.

2. What is challenged in this petition under Article 226 of the Constitution is the notice dated 1.2.1999 (Annexure "C") issued by the Gujarat State Road Transport Corporation through its Depot Manager at Surendranagar requiring the petitioner to remove the cabin situate at the Central bus-station, Surendranagar known as dry fruit stall. The petitioner has also prayed for a direction to

the respondents to consider the petitioner's offer and to give the petitioner preference in view of the fact that the petitioner is carrying on his business at the same place from 1972 onwards.

3. The petitioner has come out with a case that the petitioner was given licence to run his business from the cabin in question at Surendranagar bus-station since 1972 and a licence agreement was also executed between the parties on 12.11.1973 and thereafter the respondents have extended the licence period. It is stated that the petitioner has paid licence fees at the rate of Rs. 612/- per month from 6.9.1998 to 31.8.1999. However, the petitioner was informed in February, 1999 that his licence was being cancelled from 28.2.1999. The petitioner, therefore, filed a suit before the Civil Court at Surendranagar. Since the ad-interim relief granted in the suit came to be vacated, the petitioner filed Misc. Civil Appeal No. 14 of 1999 in the District Court, Surendranagar. The District Court directed the respondents to follow due procedure of law for removing the petitioner and for taking over possession of the site in question from the petitioner. Upon expiry of the licence period on 31.8.1999, the respondents again issued the impugned notice. The petitioner has filed Civil Suit No. 19 of 1999 before the Civil Court at Surendranagar contending that the petitioner cannot be evicted without following the procedure prescribed under the Gujarat Public Premises (Eviction of Unauthorized Occupants) Act, 1972 and that the petitioner may be permitted to continue to carry on his business in the aforesaid cabin. The respondent-Corporation appeared in the above suit and contended that the Civil Court had no jurisdiction to entertain such a suit in view of the provisions of Section 16 of the aforesaid Act. The petitioner, therefore, filed the present petition in August, 1999.

4. On 30.8.1999, while issuing notice to the respondents, this Court granted ad-interim relief against removing the petitioner from the cabin in question subject to the condition that the petitioner deposits with the respondents a sum of Rs.5000/- every month with effect from 1.9.1999.

5. In response to the notice, affidavit in reply has been filed by the Sr. Divisional Traffic Officer of the respondent Corporation contending that after expiry of the licence on 31.8.1999, the petitioner has no right to continue with the possession of the site or the cabin, that the cabin is blocking one shop in a nature of a stall constructed by the ST Corporation; that the

Corporation has invited tenders where the highest offer of Rs.10,151/- per month is received and that even the petitioner's son has offered Rs.9.631/- per month.

6. The petitioner has filed rejoinder affidavit submitting that the highest offers made by the other parties are not genuine and bona fide and that those offers including the offer of his son are made in order to defeat the petitioner's plea out of animosity against the petitioner as the petitioner is not on good terms with his son and another party.

7. At the hearing of this petition, Mr Nilesh Pandya, learned counsel for the petitioner has submitted that the petitioner has been carrying on his business lawfully at the same place for the last about 29 years and that the offers made by the other parties in response to the tender notice dated 8.5.2000 are not bona fide or genuine and that those offers are made only to defeat the petitioner's legitimate claim. Mr Pandya has further submitted that the respondent Corporation has been following the policy of giving licence to the existing licence holder so that a person carrying on his business for decades is not uprooted merely because another party comes with a higher offer which may not be genuine.

8. Mr KS Jhaveri, learned counsel for the respondents on the other hand submits that when the other party had made higher offer, the petitioner has no right to continue to occupy the cabin or to come in the way of the respondents allotting the newly constructed stall on licence basis.

9. In response to a query from the Court as to what is the outcome of the inquiry about the bona fides of the higher offers made by the other parties, Mr Jhaveri for the respondents fairly states that Shri Devjibhai Maganbhai Bhutani who offered Rs.10,111/- was given the allotment letter and he was required to deposit the amount as per the Rules, but that person did not come forward with any deposit and that the next higher offer was from the petitioner at Rs.4995-21. Mr Jhaveri further states that the offer of Rs. 9631-21 received from the petitioner's son was in response to the earlier tender notice, but the said tender notice was cancelled and the next tender notice was issued on 8.5.2000, pursuant to which only two offers were received, one from Shri Devjibhai Maganbhai Bhutani at Rs.10,111/- and the other one from the petitioner at Rs.4995-21 ps.

10. In view of the aforesaid developments during

pendency of the petition, it is now clear that the offer of Devjibhai Maganbhai Bhutani has not been backed by the requisite deposit and, therefore, the offer made by Devjibhai Maganbhai Bhutani cannot be considered to be genuine or bona fide and he will go out of the zone of consideration, even as per the Corporation's Rules. That leaves only the petitioner's offer at Rs.4995-21 per month. There is no dispute about the fact that the petitioner has been depositing with the respondents an amount of Rs. 5000/- with effect from 1.1.1999 as per the ad-interim order passed by this Court while issuing notice on 30.8.1999.

11. In view of the above, there does not appear to be any reason why the petitioner should not be granted licence for running a stall at the newly constructed premises subject to the condition that the petitioner removes the cabin originally occupied by him within one week from the date of allotment of the newly constructed stall.

12. During the course of making submissions, the learned counsel for the petitioner states that if the respondents are prepared to continue the petitioner's licence for running the business from the newly constructed stall, the petitioner is even prepared to pay Rs.6000/- per month as licence fees in order to see that the petitioner can carry on his business peacefully without any future litigation subject to the respondent Corporation issuing the licence in favour of the petitioner for a reasonable period of 7 to 11 years as per the existing policy of the Corporation, with effect from 1.7.2001.

13. Mr Jhaveri for the respondents states that he has no instructions in the matter as far as the determination of the amount is concerned, but Mr Jhaveri is also not in a position to dispute that there is no other genuine and bona fide offer higher than the offer of the petitioner. This statement is made by Mr Jhaveri in view of the instructions received by him that Devjibhai Maganbhai Bhutani who had made the highest offer at Rs.10,111/- is out of the fray since he did not deposit the requisite amount required by the respondent Corporation.

14. In view of the above discussion, the petition is partly allowed. The respondents are directed to give the petitioner licence for carrying on his business from the newly constructed premises of the respondent Corporation at the Central bus-station, Surendranagar at the monthly licence fees of Rs.6000/- per month for such a duration

of years in accordance with the existing policy of the respondents and subject to the condition that the petitioner removes the cabin in front of the newly constructed stall within one week from the date of getting possession of the newly constructed shop.

It is, however, clarified that the amount of licence fees of Rs.6000/- per month as aforesaid shall be with effect from 1.7.2001 and the amount of Rs. 5000/- per month paid by the petitioner with effect from 1.9.1999 till 30.6.2001 shall be treated as licence fees for the said period and the respondents shall be entitled to appropriate the same as licence fees for the aforesaid period.

15. The learned counsel for the petitioner states that the petitioner is not refunded the earnest money deposit for the first tender issued in the year 1999. If the earnest money deposit for the said tender has not been refunded to the petitioner so far and not adjusted against the earnest money deposit for the next tender, the respondents shall refund the same within one month from the date of receipt of the writ of this Court or a certified copy of this order, whichever is earlier.

Rule is made absolute to the aforesaid extent only with no order as to costs.

(M.S. Shah, J.)

sundar/-