

**GUJARAT INFORMATION COMMISSION
BUREAU OF ECONOMICS & STATISTICS BUILDING,
1st FLOOR, SECTOR 18, GANDHINAGAR.**

Appeal No. A-0580-10-11

Appeal under section - 19 of the right to Information Act 2005.

The 12th day of March, 2013.

Appellant:

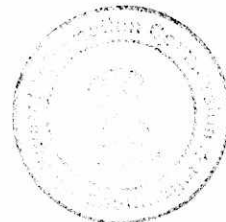
✓ Ms. Teesta Setalwad, Secretary,
Citizens for Justice & Peace,
"Nirant" Bungalow, Juhu Tara Road,
Juhu, Mumbai -400 049.

Respondents:

- (1) The Public Information Officer,
Inspector General of Police/Law & Order-Crime,
Police Bhavan, Sector-18,
Gandhinagar.
- (2) The Appellate Authority and,
Office of the Director General of Police,
Police Bhavan, Sector-18,
Gandhinagar.

Before Shri D. Rajagopalan, Chief Information Commissioner

The appellant has approached the Commission on 21st May, 2010 being dissatisfied with the response received from the concerned public authority regarding her application dated 12-9-2007 and two other applications on the same date i.e., 9-10-2007. In response to the appellant's representation before the Commission an interim order was issued on 6-8-2012 wherein the Commission held that the reports



sought by the Commission on the appellant's representation has not been received by the Commission and the Commission advised in the interim order the concerned public authorities to submit the report within 7 days.

2. In today's hearing the appellant was present and the representatives of the public authorities concerned were not present. Perusing the documents available before the Commission, it is noticed that the Inspector General of Police & Public Information Officer, Law & Order/Crime Branch, vide his letter dated 20th October, 2007 informed the appellant that the two applications dated 9th October, 2007 which sought information regarding crimes against women & rural and urban suicides are exempted under section 24 of the RTI Act, vide Home Department notification dated 25th October, 2005. The appellant approached the first appellate authority on 17-12-2007 and the first appellate authority vide his order dated 7-3-2008 has upheld the decision taken by the PIO.

3. In today's hearing the appellant informed the Commission that the appellant approached the Commission earlier on 10-6-2008 and not on 21-5-2010. The Commission took note of the same. It is also noticed that the concerned Public authority has not complied with the order dated 6-8-2012 of the Commission. Commission presumes that the public authority has no view to offer, and decides to examine the case on merits based on available papers. Perusing the applications of the appellant addressed to the P.I.O., it is noticed that vide her application dated 12-9-2007 the appellant has sought informations regarding killings in police custody/extra judicial killings/encounter killings in the State of Gujarat between January, 2002 to July, 2007. It is noticed that the appellant sought statistical

information regarding such killings, inquiries, Departmental or Magisterial, conducted and stages of such investigations and also petitions filed. Vide her two applications dated 9-10-2007, she has sought informations regarding the crimes against women and also suicides in urban and rural areas of Gujarat for the year 2000-2001 to 2006-2007.

4. The PIO concerned and the first Appellate Authority have held a view that the information sought are barred under the notification issued by the Home Department, Government of Gujarat, as per the provisions of section 24 of the RTI Act. The relevant provision of section 24(4) of the RTI Act states:

"Nothing contained in this Act shall apply to the intelligence and security organization being organizations established by the State Government, as that Government may, from time to time, by notification in the Official Gazette, specify:

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section and that such information shall be provided with the approval of the concerned State Information Commission".

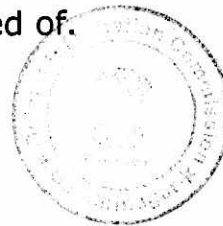
5. Section 24 of the Right to Information Act, 2005 is a special provision wherein the State Government have been empowered not to divulge information pertaining to security and intelligence. The provision intends to enable the State Government to withhold certain information which are primarily in the interest of the State from the view point of security and intelligence background. The notification issued by the State Government dated 25th October, 2005 has enlisted the organizations which will enjoy the provisions of section 24 and have the right to deny the information sought under the RTI Act, 2005. While the Commission fully appreciates the provisions of section 24



and also notification dated 25th October, 2005 issued by the State Government, yet the approach adopted by the PIO and the first Appellate Authority to take a sweeping decision on the informations sought by the appellant without giving any clear justification, prima-facie appears to be erroneous. The Commission has always held a view in many similar cases heard by the Commission earlier that the various wings of the police department that are enlisted under the notification dated 25-10-2005 are many a times entrusted works that are over and above the normal function of the concerned wings and such functions that are additionally entrusted to such wings pertain to the normal routine functions of the police department and it is therefore not justified to withhold such informations as well on the ground that the notification dated 25-10-2005 debar the concerned wings of the department as a whole. Examining the informations sought by the appellant vide her application dated 12-9-2007 and two more applications dated 9-10-2007, it is noticed that in all these three applications the appellant has sought primarily statistical information pertaining to custodial deaths and encounter deaths, crimes against women and suicides in urban and rural areas. All such informations are generally compiled by the field level police stations, collated at higher level and submitted to the Government periodically and the Commission feels that this work is a normal routine function of the police department and to debar such informations is definitely not the intention of section 24 of the RTI Act, 2005. Further the informations sought in a way may touch upon the provision of Human Rights in certain cases, therefore, could get exemption from section 24. It is possible that amongst the information sought by the appellant some specific informations pertaining to the custodial deaths, encounter deaths, atrocities against women and even suicides in urban and rural areas, possibly attract the provisions of section 24 or even section 8

of the RTI Act and the concerned public authority is fully empowered on the basis of the merits of such specific cases to deny information highlighting the reasons thereof. In such an eventuality in case the appellant approaches the Commission regarding such decisions, the Commission will be within its rights to examine the decision of the public authority and decide each of the case on merits. The Commission is of the view that the denial of information by the public authority of the statistical information sought by the appellant is not completely justified. The Commission feels that the public authority concerned has erred in viewing the provisions of section 24 and the notification of Government of Gujarat dated 25-10-2005 in a sweeping manner and thereby denying all the statistical informations sought by the appellant. The Commission on the basis of its above mentioned observations, therefore, directs the PIO of the concerned public authority to give the informations sought by the appellant, free of cost, since as per the provisions of section 7(6) the information has not been given to the appellant within the prescribed time limit. The Commission appreciates the time required for collating the informations sought, therefore, the PIO concerned is directed to give the information within 45 days from the date of receipt of this order. Specific informations that are denied may be justified with reasons.

6. Based on the observations made by the Commission, as mentioned above, the case is disposed of.



sd-
(D. Rajagopalan)
Chief Information Commissioner
Gujarat Information Commission

Compared by
Movaiyyu P.B. 18/3
Legal Officer
Gujarat Information Commission,
Gandhinagar.

Authorized By 5
[Signature]
Secretary
Gujarat Information Commission,
Gandhinagar.