

Gujarat High Court

Swati Rajiv Goswami vs Commissioner Of Police, ... on 17 January, 2023

Bench: Biren Vaishnav

C/SCA/11826/2020

CAV JUDGMENT DATED: 17/01/2023

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 11826 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BIREN VAISHNAV

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question

of law as to the interpretation of the Constitution of India or any order made thereunder ?

===== SWATI RAJIV GOSWAMI Versus COMMISSIONER OF POLICE, AHMEDABAD ===== Appearance:

MR B S SOPARKAR(6851) for the Petitioner(s) No. 1 MR. ROHAN SHAH, ASSISTANT GOVERNMENT PLEADER for the Respondent(s) No. 1, 2 =====

CORAM:HONOURABLE MR. JUSTICE BIREN VAISHNAV Date : 17/01/2023 CAV JUDGMENT 1

The petitioner by way of this petition under Article 226 of the Constitution of India, seeks publication of C/SCA/11826/2020 CAV JUDGMENT DATED: 17/01/2023 Rules framed by the respondents under Sec.33 of the Gujarat Police Act, 1951 (hereinafter referred to as "the Police Act"). The petitioner further seeks publication and online access to all the Rules, Regulations, Instructions, Manuals and Records held by the respondent No.1 or under its control or used by its employees for discharging its functions. It is the case of the petitioner that failure to publish such rules amounts to illegality of the executive action violation of democracy rule of law and natural justice and infringement of rights of the petitioner of free speech and expression and assembly enshrined in Article 19 of the Constitution and Right to Life enshrined in Article 21 of the Constitution.

## 2 Facts in brief are as under:

2.1 On 12.12.2019, the Citizenship Amendment Act, 2019, was assented to by the President and published for general information in the official gazette. Some of the residents of Ahmedabad willing to express their opinion on this amendment, wished to express the same in C/SCA/11826/2020 CAV JUDGMENT DATED: 17/01/2023 peaceful manner. The petitioner, wanting to peacefully assemble sought permission for assembly and peaceful protest on 29.12.2019 between 5 p.m to 7 p.m on footpath of road adjacent to Kanoria Centre for Arts & Gufa of Ahmedabad. The information was sought from the Police Inspector, Gujarat University Police Station, vide letter dated 25.12.2019. On 28.12.2019, vide "Samaj Yadi" the petitioner was informed that the permission for such assembly and peaceful protest is not allowed and is rejected on the grounds of situation of law and order as well as problem of traffic. The petitioner in violation of the order did hold an assembly and was detained for a few hours.

2.2 With a view to know the Rules under which the permission of the petitioner was processed, the petitioner addressed a letter to the respondent No.1, Commissioner of Police, Ahmedabad, asking for the copy of the complete rules framed under Sec.33 (1) (o) of the Police Act and secondly if a request was rejected, whether it was so C/SCA/11826/2020 CAV JUDGMENT DATED: 17/01/2023 done under any of the rules or regulations. On 06.03.2020, the petitioner received a reply that her request for information sought is refused. The refusal of information and the action of the respondent No.1 in doing so is challenged on the ground of it being grossly bad, illegal, violative of principles of natural justice, Rule of Law & Democracy.

## 3 Mr.B.S.Soparkar, learned counsel appearing for the petitioner would submit as under:

3.1 Section 33(1) of the Gujarat Police Act, according to the learned counsel empowers the respondent Commissioner under the area which is in their respective charge to make, alter or rescind rules. Clause (o) of the section empowers such officer to make rules regulating the conduct of and behaviour or action of persons constituting assemblies and processions on or along the streets prescribing in the case of processions the rules by which the order in which and the times at which the same may pass. Such rules are framed subject to the provisions C/SCA/11826/2020 CAV JUDGMENT DATED: 17/01/2023 of Sec.33(6) of the Police Act which provides that such rule made be published in the official gazette and in the locality affected thereby.

3.2 Reading sec.4(1)(b) of the Right to Information Act, Mr.Soparkar, learned counsel, would submit that this provision casts an obligation on the public authority to proactively publish 17 kinds of information including the procedure followed in the decision making process, the norms set by it for discharge of its functions and the rules and regulations under control or used by its employees for discharging its functions. He would therefore submit that not publishing and proactively disclosing the rules and orders framed under Sec.33(1) of the Police Act are in violation of Sec.33(6) of the Police Act as well as sec.4 of the Right to Information Act.

3.3 If the website and the RTI booklet is accessed, some of the information is classified as "for department use only". Even the screenshot of the website would indicate that only for example the

Acts under which the police C/SCA/11826/2020 CAV JUDGMENT DATED: 17/01/2023 authorities are required to act, the names thereof are displayed on the website without the actual document being so made available. He would submit that the necessity of publication of law is a part of the rules of natural justice and the petitioner is entitled to know the laws of the land.

3.4 The enforcement of the RTI Act has been repeatedly emphasized as being one in which the peoples Right To Information is a facet of Article 19(1)(a) of the Constitution of India which guarantees freedom of speech. He would rely on several decisions which declare that transparency is the key for functioning of a healthy democracy. In support of his submission, Shri Soparkar, learned counsel, would rely on the following decisions. (I) State of Uttar Pradesh vs. Raj Narain, reported in AIR 1975 SC 865.

(ii) S.P.Gupta Vs. President of India & Ors, reported in AIR 1982 SC 149.

(iii) Reliance Petro Chemicals Ltd vs. Proprietors of Indian Express Newspaper Bombay Pvt Ltd & Ors., C/SCA/11826/2020 CAV JUDGMENT DATED: 17/01/2023 reported in AIR 1989 SC 190.

(iv) Union of India & Anr vs. Association of Democratic Reforms, reported in AIR 2002 SC 2112. 3.5 By reading the very preamble of the Act, what is evident is that the Right to Information Act was enacted with the spirit that the democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold governments and their instrumentalities accountable to be governed. In support of his submission, Mr.Soparkar, learned counsel, would rely on the decision in the case of Reserve Bank of India vs. Jayantilal N. Mistry, reported in 2016 (3) SCC 525.

3.6 When information was sought for, it is denied on the ground that in accordance with the Notification dated 25.10.2005, the Special Branch which decides the procedure of assemblies and processions is exempted from such disclosure in accordance with powers under Sec.24 of the Right to Information Act. He would submit C/SCA/11826/2020 CAV JUDGMENT DATED: 17/01/2023 that such exemption is not germane to the disclosure of such information in view of the fact that the procedure may be the application for permission that may be processed by the authorities in tandem with the special branch which itself does not prohibit publication of information.

4 Mr.Rohan Shah, learned Assistant Government Pleader, appearing for the State would raise preliminary objections to the maintainability of the petition. He would submit as under:

4.1 No fundamental or legal right of the petitioner has been violated because of any action or inaction on the part of the respondent. He would submit that the petition filed seeking a direction to the respondent No.1 to comply with the requirements under Sec. 4 of the Right to Information Act ought to be dismissed on the grounds of vagueness, ambiguity and absence of cause of action of the petition. Permission sought for by the petitioner on 28.12.2019 for holding assembly and peaceful protest C/SCA/11826/2020 CAV JUDGMENT DATED: 17/01/2023 was rejected which order is not challenged by the petitioner. The application seeking rules framed under Sec.33 was rejected on 06.03.2020. The prayer sought in the petition for publication of rules and norms is completely

different from the main application and therefore the petition be dismissed. Moreover, as submitted by learned Assistant Government Pleader Shri Rohan Shah, the petition also deserves to be dismissed as it is one which pleads a relief in the nature of public interest litigation. The other submission of the learned Assistant Government Pleader is that the petition deserves to be dismissed on the ground of alternative remedy. He would submit that if the application dated 16.01.2020 which sought certain information is rejected, there is a mechanism under the RTI Act that the decision of the State Public Information Officer is appealable to his senior under Sec.19(1) of the Act. A second appeal is also available from a decision under the RTI Act before the State Information Commission. In light of this hierarchical procedure of appeal, the petitioner ought not C/SCA/11826/2020 CAV JUDGMENT DATED: 17/01/2023 to directly approach the Court seeking a writ of mandamus.

4.2 The petitioner has adopted a clever approach so as not to strictly comply with the procedure under the RTI Act. What is evident is that the permit section, the Special Branch, Ahmedabad, intimated to the competent authority under the RTI Act regarding the rejection of the disclosure of information. The Public Information Officer in turn informed the petitioner about the rejection of her request. In order to cleverly avoid the procedure of appeal, the petitioner without seeking alternative remedy is seeking indulgence of this Court under Article 226 of the Constitution of India.

4.3 Mr.Shah, learned AGP, would further submit that the petitioner has not come with clean hands. She has materially suppressed the fact that the permission to hold an assembly on 29.12.2019 for 50 to 60 people was denied and the petitioner conducted an assembly in the peak hours disobeying the notification dated 24.12.2019 C/SCA/11826/2020 CAV JUDGMENT DATED: 17/01/2023 which led to disruption of traffic. On merits, Mr.Shah, learned AGP, would submit that when the petitioner sought permission vide her application dated 26.12.2019 to conduct and assemble to protest on 29.12.2019, the respondent No.1 had issued a Notification on 24.12.2019 by exercising powers under Sec.144 of the Criminal Procedure Code read with Sec.37 (3) of the Gujarat Police Act, whereby it was prohibited for more than four persons to assemble and it was in accordance with this notification read with sec.37(3) of the Act that after opinion was obtained from the respective police station, the request was rejected. Therefore it is not a case where permission has been rejected under rules framed under Sec.33 of the Gujarat Police Act. The application made by the petitioner seeking information i.e. a copy of the complete rules is not granted in exercise of powers vested in the authority and once it is evident from the affidavit- in-reply that the Special Branch of the Commissioner of Police is a Security & Intelligence Organization of the State Government which is one of the exempted 11 C/SCA/11826/2020 CAV JUDGMENT DATED: 17/01/2023 organizations by virtue of the gazette notification dated 25.10.2005, such exemption to the Special Branch under Sec.24(4) of the Right to Information Act entitles the government not to give or part with information and the petitioner therefore cannot seek direction for disclosing the information which the authorities are not statutorily bound to disclose.

5 In rejoinder, Mr.Soparkar, learned counsel, would submit that essentially what the petitioner wants to know is what the law of the land is in context of the rules which permit a petitioner to peacefully demonstrate and the petitioner is entitled to know such rules. That such rules are framed under Sec.33 of the Act is evident in light of the decision of the Hon'ble Supreme Court in the case of

Himmat Lal K. Shah vs. Commissioner of Police, reported in (1973) 1 SCC 227 which, declared Rule 7 of the rules framed under Sec.33 as void. What is also evident from the decision in the case of Gujarat Majdoor Panchayat vs. State of Gujarat & Anr., C/SCA/11826/2020 CAV JUDGMENT DATED: 17/01/2023 reported in 1988 (2) GLR 1005, that there are regulations for conduct of assembly and processions which were framed by the Police Commissionerate of Ahmedabad in the year 1975.

5.1 Mr.Soparkar, learned counsel, would therefore submit that rules are framed under Sec.33. The authority respondent No.1 is admittedly a public authority under Sec.2(h) of the Act and therefore, the petitioner is entitled to know such rules. There is violation of natural justice in view of the fact that the petitioner is entitled to know all the rules and regulations and as is held by the Hon'ble Supreme Court in the case of Central Board of Secondary Education v. Aditya Bandopadhyay reported in (2011) 8 SCC 497, that the information can be divided into three categories, one which promotes transparency and accountability in the working of every public authority and in regard to the information falling under such category, there is a special responsibility on the public authorities to publish and disseminate such C/SCA/11826/2020 CAV JUDGMENT DATED: 17/01/2023 information. Even in light of the decision in the case of State Of Haryana vs Subash Chander Marwaha And Ors., reported in (1974) 3 SCC 220, the petitioner is entitled to a writ of mandamus in light of the refusal to provide such information.

6 Having considered the submissions made by the learned counsels for the respective parties, what is evident is that the power to regulate the conduct and behaviour or action of the persons constituting assemblies and processions along the streets and prescribing the rules and the order in which it can pass and at the time when it can so pass, is a conduct which can be regulated by rules which can be framed under the provisions of Sec.33(1) (o) of the Gujarat Police Act, 1951. Sec.33(1)(o) reads as under:

"(o) regulating the conduct of and behavior or action of persons constituting assemblies and processions on or along the streets and prescribing in the case of processions, the routes by which the order in which and the times at which the same may pass."

C/SCA/11826/2020 CAV JUDGMENT DATED: 17/01/2023 6.1 Further, such rules or orders framed are subject to the provisions of sec.33(6) of the Police Act. 33(6) of the Act, reads as under:

"(6) The power of making altering or rescinding rules under this section shall be subject to the condition of the rules being made, altered or rescinded after previous publication, and every rule made or alteration or rescission of a rule made under this section shall be published in the Official Gazette and in the locality affected thereby by affixing copies thereof in conspicuous places near to the building, structure, work or place, as the case may be, to which the same specially relates or by proclaiming the same by the beating of drum or by advertising the same in such local newspapers in English or in the local language, as the authority making altering or rescinding the rule may deem fit or by any two or more of these mean or by any other means it may

think suitable.

Provided that any such rules may be made, altered or rescinded without previous publication if the Commissioner, the District Magistrate, or as the case may be, the District Superintendent, as the case may be, is satisfied that circumstances exist which renders it necessary that such rules or alterations therein or rescission thereof should be brought into force at once."

6.2 Reading of these two provisions indicate that not only is the police authority empowered to regulate such conduct of people assembling and taking out processions in accordance with the rules framed under Sec.33 of the C/SCA/11826/2020 CAV JUDGMENT DATED: 17/01/2023 Act, but sub-section 6 of Sec.33 mandates publication of such rules or orders. These provisions have to be seen in light of certain provisions of the Right to Information Act, 2005. Reading the preamble of the Right to Information Act, indicates that the Constitution of India has established a democratic republic. Democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold governments and their instrumentalities accountable to the governed. There has to be a harmonization of conflicting interest while preserving the paramouncy of the democratic ideal, inasmuch as, when revelation of information in actual practice is likely to conflict with other public interest including efficient operations of the government optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information certain information sought for by the citizen who desire to have it must be provided. In this context, it would be relevant to consider the definition of the term "information" as C/SCA/11826/2020 CAV JUDGMENT DATED: 17/01/2023 defined in sec.2(f) of the Act. Sec.2(f) of the Act, reads as under:

"2(f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;"

6.3 Accordingly, information means any material in any form, including records, documents, opinions, advices etc., which can be accessed by a public authority. It is not disputed that the respondent No.1 is a public authority. Sec.4 of the Act provides for obligation of public authorities. Sec.4 of the Act reads as under:

"4. Obligations of public authorities.--

(1) Every public authority shall--

(a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the

country on different systems so that access to such records is facilitated;

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(b) publish within one hundred and twenty days from the enactment of this Act,--

(i) the particulars of its organisation, functions and duties;

(ii) the powers and duties of its officers and employees;

(iii) the procedure followed in the decision making process, including channels of supervision and accountability;

(iv) the norms set by it for the discharge of its functions;

(v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;

(vi) a statement of the categories of documents that are held by it or under its control;

(vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;

(viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;

(ix) a directory of its officers and employees;

(x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;

(xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;

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(xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;

(xiii) particulars of recipients of concessions, permits or authorisations granted by it;

- (xiv) details in respect of the information, available to or held by it, reduced in an electronic form;
  - (xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
  - (xvi) the names, designations and other particulars of the Public Information Officers;
  - (xvii) such other information as may be prescribed, and thereafter update these publications every year;
- (c) publish all relevant facts while formulating important policies or announcing the decisions which affect public;
- (d) provide reasons for its administrative or quasi judicial decisions to affected persons. (2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.

(3) For the purpose of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public.

(4) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or C/SCA/11826/2020 CAV JUDGMENT DATED: 17/01/2023 State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed. Explanation.-- For the purposes of sub-sections (3) and (4), "disseminated" means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority."

6.4 Reading of the section indicates that it provides that 17 kinds of information, including the procedure followed in the decision making process, the norms set by it for discharge of its functions and the rules and regulations held by it or under its control in discharging its functions are required to be provided by the authorities. Reading sub-section 2 indicates that it shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section 1 to provide as much information suo moto to the public at regular intervals through various means of communications so that the public have minimum resort to the use of this Act to obtain information.

C/SCA/11826/2020 CAV JUDGMENT DATED: 17/01/2023 7 It is in light of this provision of the Right to Information Act that the decision of the respondent No.1 in rejecting the request needs to be considered. What is evident from the annexures of the screenshot annexed to the petition is that



the website of the respondent No.1 only shows a list containing the number of rules, acts, regulations and manuals but the copy of the same is not available online. The booklet also classifies certain information as being "departmental use only". This when read in context of sec.33(6) of the Act would be contrary to the mandate as provided under the Section which mandates publication of the rules. The respondent cannot refuse to produce such rules or orders inasmuch as, what is evident from the mandate of the Act read in context of the objectives of the Act is to promote free flow of information. What is rightly submitted by the learned counsel for the petitioner while quoting Lon L Fuller that "there can be no greater legal monstrosity than a secret statute". What is also pointed out as pleaded in the petition is a quotation of James Madison who stated "A C/SCA/11826/2020 CAV JUDGMENT DATED: 17/01/2023 popular government, without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both. Knowledge will forever govern the ignorance and a people who mean to be their own Governors must arm themselves with the power which knowledge gives". It is therefore incumbent that the rules and orders framed under Sec.33 of the Police Act which are held or under the control of the employees for discharging its functions must be published on the website and made available and accessible to the public. 7.1 As held by the Hon'ble Supreme Court in the decision of Raj Narain (supra), relevant para of the decision reads as under:

" In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can but few secrets. The people of this country have a right to know every public act, everything, that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have on repercussion on public security.

C/SCA/11826/2020 CAV JUDGMENT DATED: 17/01/2023 To cover with veil secrecy the common routine business, is not in the interest of public...." 7.2 In the case of S.P.Gupta (supra), the relevant para reads as under:

".... The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosure of information in regard to the functioning of Government must be rule and secrecy an exception justified only where the strictest requirement of public interest so demands. The approach of the Court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest...."

7.3 In the case of Reliance Petrochemicals (supra) the observation of the Supreme Court reads as under:

".... We must remember that the people at large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy. Right to know is a basic right which citizens of a free country aspire in the broader horizon of the right to live in this age in our land under Article 21 of our Constitution. That right has reached new dimensions and urgency. That right puts greater responsibility upon those who take upon the responsibility to inform..."

7.4 In the case of Union of India & Anr (supra), the C/SCA/11826/2020 CAV JUDGMENT DATED: 17/01/2023 Hon'ble Supreme Court observed as under:

" The right to get information in democracy is recognized all throughout and it is natural right flowing from the concept of democracy..."

8 At the cost of reiteration, the very preamble of the Act captures the importance of the democratic right of an informed citizenry to the transparency in the functioning of the government. As held in the case of Jayantilal Mistri (supra), what is observed by the Hon'ble Supreme Court is quoted as under:

"Because an informed citizen has the capacity to reasoned action and also to evaluate the actions of the legislature and executives, which is very important in a participative democracy and this will serve the nation's interest better which as stated above also includes its economic interests. Recognizing the significance of this tool it has not only been made one of the fundamental rights under Article 19 of the Constitution also a Central Act has been brought into effect on 12th October 2005 as the Right to Information Act, 2005..." The ideal of 'Government by the people' makes it necessary that people have access to information on matters of public concern. The free flow of information about affairs of Government paves way for debate in public policy and fosters accountability in Government. It creates a condition for 'open governance' which is a foundation of democracy."

9 In accordance with mandate under Sec.4 of the Act C/SCA/11826/2020 CAV JUDGMENT DATED: 17/01/2023 therefore and in light of the fundamental rights guaranteed to the petitioner under Articles 19 and 21 of the Constitution of India, in the opinion of this Court, the petitioner is entitled to the information so provided. 10 Coming to certain preliminary objections raised on behalf of the respondent State which need to be answered, essentially, it is the stand of the State Government that the petition is not maintainable because no fundamental right is violated, that rather than challenging the rejection of the permission to hold a rally, a petition is filed seeking rules under Sec.33 of the Gujarat Police Act, 1951. That the petition is barred by an alternative remedy inasmuch as rather than invoking the jurisdiction under Article 226 of the Constitution of India, the petitioner ought to have resorted to statutory remedies provided under the relevant sections of the Right to Information Act. No right accrues to the petitioner to get the rules so framed. On the main objections as to the rights of the parties, it is the case of C/SCA/11826/2020 CAV JUDGMENT DATED: 17/01/2023 the respondents that the application for holding assembly is not rejected under the rules framed under Sec.33 of the Police Act but in accordance with the Notification dated

24.12.2019 issued in exercise of powers under Sec.144 of the Code of Criminal Procedure read with Sec.37 of the Police Act. That, the petitioner is not entitled to any information by virtue of the Notification dated 25.10.2005, by which the Special Branch is one of the eleven organizations exempted from the purview of the Right to Information Act.

10.1 The contentions of the State on the preliminary grounds needs to be rejected. What the petitioner has sought is to assail the action of the respondents of non disclosure of Rules, Regulations and Instructions held by the respondent No.1 or under its control or used by its employees for discharging its functions. Reading sec.2(f) with sec.3 and 4 of the Right to Information Act makes it mandatory for the authorities to furnish information and promote transparency. Had the petitioner been supplied C/SCA/11826/2020 CAV JUDGMENT DATED: 17/01/2023 with the reasons and the rules under which she was denied permission to protest in 2019, she would have had access to the law of the land and to the decision making process which could enable the petitioner to challenge such information. The stand of the government is that since the information is sensitive, inasmuch, as the Special Branch which gave feed back is exempted from the Information Act is no ground to deny such information. What the authority seem to emphasize is that since the end of the information appears to be because the purpose of the protest was political, such information need not be provided is in the opinion of this Court, killing and smothering the very purpose of the Right to Information Act, which, is evident from the preamble thereof which is to promote transparency in democracy. That there are no rules under Sec.33 of the Gujarat Police Act and therefore no information can be so provided as the rejection was under another provision seems to be a misconceived proposition of the State.

C/SCA/11826/2020 CAV JUDGMENT DATED: 17/01/2023 10.2 Decisions cited by the learned counsel for the petitioner in the case of Himmat Lal K Shah (supra) and in the case of Gujarat Majdoor Panchayat (supra) indicate that the respondent No.1 does have the power and also does publish rules dealing with regulating the conduct of processions and assemblies. If that be so is a fact which is not denied, the petitioner is entitled to have access to such Rules, Regulations, Instructions, Manuals and Records in light of the provisions of Sec.4 of the Right to Information Act. What is evident therefore that the provisions of the Right to Information Act as set out by the decision in the case of Aditya Bandhopadhyay (supra), indicates that the provisions of the Act and the scheme divides information into three categories. It will be in the fitness of things to reproduce para 59 of the decision in the case of Aditya Bandhopadhyay (supra), which reads asunder:

"59. The effect of the provisions and scheme of the RTI Act is to divide 'information' into the three categories. They are :

(i) Information which promotes transparency and accountability in the working of every public authority, disclosure of which may also help in C/SCA/11826/2020 CAV JUDGMENT DATED: 17/01/2023 containing or discouraging corruption (enumerated in clauses (b) and (c) of section 4(1) of RTI Act).

(ii) Other information held by public authority (that is all information other than those falling under clauses (b) and (c) of section 4(1) of RTI Act).

(iii) Information which is not held by or under the control of any public authority and which cannot be accessed by a public authority under any law for the time being in force.

Information under the third category does not fall within the scope of RTI Act. Section 3 of RTI Act gives every citizen, the right to 'information' held by or under the control of a public authority, which falls either under the first or second category. In regard to the information falling under the first category, there is also a special responsibility upon public authorities to suo moto publish and disseminate such information so that they will be easily and readily accessible to the public without any need to access them by having recourse to section 6 of RTI Act. There is no such obligation to publish and disseminate the other information which falls under the second category."

10.3 Therefore, what is evident on conjoint reading of Sec. 4(1)(b), 4(2), 4(3) and 4(4) of the Right to Information Act is that the petitioner is entitled and so the respondent is under a legal duty to publish informations specified in sec. 4(1)(b) of the Act and evidently, the petitioner is entitled to know the rules C/SCA/11826/2020 CAV JUDGMENT DATED: 17/01/2023 framed under Sec.33 of the Gujarat Police Act, so as to know the reasons by which the petitioner was denied permission as in the absence of such knowledge, the petitioner will be handicapped in challenging such permission which will be a direct infringement of his fundamental right and a statutory right to know and access the law of the land which he violated. Desirous of seeking such information, especially the Rules framed under Sec.33 of the Gujarat Police Act, the petitioner in her right is entitled to a writ of mandamus for a direction to seek such information, especially when, it will help what is evidently the purpose of the RTI Act i.e. to receive information so as to know what is the procedure followed in the decision making process the norms set by it for the discharge of the functions by the State and the Rules and Regulations empowering such decision making process. 11 For all the aforesaid reasons therefore, the petition is allowed. The respondent No.1 is directed to publish all the rules and orders framed under Sec.33 of the Gujarat C/SCA/11826/2020 CAV JUDGMENT DATED: 17/01/2023 Police Act on the website in the manner that the same are made available and accessible to the public and further direction is issued that the respondent No.1 comply with the requirements of Sec.4 of the Right to Information Act and publish and make available on their website the texts of all the Rules, Regulations, Instructions, Manuals and Records held by it or under its control or used by its employees for discharge of its functions. No orders as to costs.

(BIREN VAISHNAV, J) BIMAL