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# Citizenship under RTI Act 2005

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Only citizens can apply for the information under this Act. Right to Information Act confers right not to all persons, but only on Citizens. The Application must be under the name and signature of a citizen as a person. Therefore, a corporation, company or anybody of individuals whether incorporated or not, is not entitled to seek information.

'Person' defined in Section 3(42) of the General Clauses Act, 1897, include natural person and juristic person. Every citizen is a person, but the vice versa is not true. Artificial or juristic person cannot be a citizen. The juristic person cannot enforce fundamental rights, but the individual citizens forming such legal entity / juristic persons can invoke the fundamental rights.

In a case of Inder Grover v Ministry of Railways [(No. CIC/OK/A/2006/000121 27.06.2006 (CIC))]

"Persons applying for information under this Act should apply as natural and individual persons (citizens). Corporate bodies and juristic persons can not apply for information under this act. If a person applies as a representative of a corporate body then he is not entitled for the information required under this act."

## Provisions of RTI Act regarding Citizenship

1. Section-3 of the RTI Act confers the Right to Information to all CITIZENS. Section-6(1) further provides that a 'person' who desires to obtain information under the Act shall make a request in writing.
2. Section-5(1) provides that every public authority shall designate as many officers as the Central or State Public Information Officers in all administrative units or offices under it to provide information to persons requesting for the information under this Act.
3. Section-5(3) provides that every Central or State Public Information Officer shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information.

4. Section-18(1) provides that Subject to the provisions of this Act, it shall be the duty of the Central or State Information Commission to receive and inquire into a complaint from any person.
5. Section 19(1) provides that any person, who does not receive a decision within the time specified or aggrieved by a decision of CPIO or SPIO, as the case may, prefer an appeal.
6. The legislature in its wisdom has used the word 'person' to denote an applicant, appellant or complainant in various Sections viz. 5(1), 6(1), 6(2) 7(1), 7(3), 7(4), 7(5), 7(6), 7(8), 8(3), 18(1), 19(1) and 26(2).

A conjunctive reading of all these Sections, especially section-3 with 6(1), would make it clear that a Citizen as a person can seek public information.

A "Citizen", under the Constitution Part II, that deals with "citizenship" can only be a natural born person and it does not even by implication include a legal or a juristic person like the corporation, banks.(Prabhakar S. Yende v PIO, Mapusa, Municipal Council, Goa.).

Section 2(1)(f) of the Citizenship Act defines that a "person" does not include a company, an association or a body of individuals whether incorporated or not." "Person" has been defined in Section 3(42) of the General Clauses Act, 1897, to include any company or association or body of individuals, whether incorporated or not.

## **More Explanation on Citizenship under RTI Act**

## The first issue is whether a juristic person can seek information under the Right to Information Act?

The issue whether the word “person’ mentioned in Rule-1 of Order XXXIII of CPC refers only to a natural person or includes also other juridical persons came up before the Apex Court in *Union Bank of India Vs. Khader International [(Union Bank of India Vs. Khader International Construction & Ors (AIR 2001 SC 2277))]*, in which the Apex Court held that a public limited company which is otherwise entitled to maintain a suit as a legal person can very well maintain an application under Order XXXIII Rule-1 of CPC. The Apex Court made reference to serious of decisions on the subject and held that a survey of various decisions should show that preponderance of the view is that the word “person” referred to in Order XXXIII includes a juristic person also. The Apex Court quoted with approval an earliest decision of Division Bench of the Madras High Court in *Perumal Koundan Vs. Tirumalrayapuram Jananukoola Dhanasekhara Sanka Nidhi Ltd [(Perumal Koundan Vs. Tirumalrayapuram Jananukoola Dhanasekhara Sanka Nidhi Ltd (AIR 1918 Madras 362))]* in which case the company registered under the Companies Act went into liquidation and the appointed official liquidator applied to file a suit on behalf of the company in forma pauperis against the petitioner therein and the petitioners raised objections that the company could not file a suit in forma pauperis. Repelling this contention the Division Bench held:

“We are unable to accept this contention. The word ‘person’ is not defined in the Code of Civil Procedure and consequently the definition of word ‘person’ as including any Company or Association or body of individuals whether incorporated or not, in the General Clauses Act ( X of 1897 ) would apply unless there is something repugnant to the subject or context.”

In the same case, the Hon'ble Court has come to a conclusion that the word “person’ is to be given it’s meaning in the context in which it is used. The Hon'ble Apex Court has cited the following observations of *Lord Selborne in Pharmaceutical Society Vs. London and Provincial Supply Association [(Lord Selborne in Pharmaceutical Society Vs. London and Provincial Supply Association (6 Appeal Cases 857))]*:

“There can be no question that the word ‘person’ may and prima facie does, in a public statue include a person in law; that is a corporation, as well as a natural person. But although that is a sense which the word will bear in law, and which as I said, perhaps ought to be attributed to it in the construction of a statute unless there should be any reason for a contrary construction, it is never to be forgotten, that in its popular sense and ordinary use it does not extend so far.”

It is thus a settled position of law that the term ‘person’ referred to in General Clauses Act, 1897 include natural person and juristic persons. However, the Right to Information Act confers the right not to all ‘persons’ but only on ‘citizens’ and there is no ambiguity about the definition of the term ‘citizen’. **A juristic person can be a “person” but he cannot be a “citizen”**. Every citizen is a person but the vice versa of the same is not true. An artificial or juristic person cannot be a citizen.

The issue whether corporation or juridical person can be recognized as citizen has been adjudicated in detail by the Hon'ble Supreme Court in *Bennett Coleman & Co. and ors. Vs Union of India[(Bennett Coleman & Co. and ors. Vs Union of India ( AIR 1973 SC 106 ))]* by revisiting its earlier decisions.

# Citizenship under RTI Act 2005

## Whether a juristic person can enforce fundamental rights

This issue has come up before the Apex Court in the case of *State Trading Corporation of India Limited Vs. Commercial Tax Officer, Visakhapatnam* [(State Trading Corporation of India Limited Vs. Commercial Tax Officer, Visakhapatnam [(1994) 4 SCR 99 ])] and the Hon'ble Apex Court held that the State Trading Corporation is not a citizen which necessarily means that the Fundamental Rights guaranteed by Article 19 which can be claimed only by citizens cannot be claimed by such a corporation. In the case of *Tata Engineering & Locomotive Co Vs. State of Bihar* [(Tata Engineering & Locomotive Co Vs. State of Bihar (AIR 1965 SC 40))] the Apex Court held that a corporation was not a citizen within the meaning of Article 19, and, therefore, could not invoke that Article. The majority held that nationality and citizenship were distinct and separate concepts. The view of the Apex Court was that the word "citizen" in Part-II and in Article 19 of the Constitution meant the same thing. The result was that an **incorporated company could not be a citizen so as to invoke Fundamental Rights**. The corporate veil it was said could be lifted where the company is charged with trading with the enemy or perpetrating fraud with Revenue authorities. In the case of *Charanjit Lal Chaudhuri Vs. Union of India and ors* [(Charanjit Lal Chaudhuri Vs. Union of India and ors [(1950) SCR 869])] the majority view was that an incorporated company can come up to this court for enforcement of fundamental rights.

In the case of *Express News Papers and Another Vs Union of India and others* [(Express News Papers and Another Vs Union of India and others [(1959) SCR 12]], *Sakal Papers (P) Ltd and Ors Vs. Union of India* [(Sakal Papers (P) Ltd and Ors Vs. Union of India (AIR 1962 SC 305))] relief has been granted to the petitioners claiming fundamental rights as shareholders or editors of newspaper companies. In both these cases, there was no plea about the maintainability of the writ petition on the ground that one of the petitioners happened to be a company. In the case of *Divisional Forest Officer Vs. Bishwanath Tea Co. Ltd* [(Divisional Forest Officer Vs. Bishwanath Tea Co. Ltd)], the Apex Court held that: .....

the High Court overlooked the settled legal position that a juristic person such as a Corporation is not entitled to any of the freedoms guaranteed by Article 19. The respondent was the sole petitioner in the High Court. It is a company incorporated under the Companies Act. The fundamental right claimed under Article 19(1)(g) is to practice any profession or carry on any occupation, trade or business. The respondent (company) contended that it had a right to carry on its trade or business of cultivating and raising a tea garden and as part of it to cut timber and remove the same from the leased area without the payment of royalty and that insistence upon payment of royalty unsupported by law is an unreasonable restriction denying the fundamental right guaranteed to the respondent. Article 19(1)(g) guarantees the fundamental freedom to a citizen. The respondent not being a citizen was not entitled to complain of breach or violation of fundamental right under Article 19(1)(g). [(see *State Trading Corporation of India Ltd Vs Commercial Tax Officer, Vishakhapatnam & Tata Engineering and Locomotive Co. Vs. State of Bihar.*)] However, the shareholders of a company can complain of infringement of their fundamental rights. [(See *Bennett Coleman & Co. and Ors Vs. Union of India and Ors.*)] Such is not the case pleaded. Therefore, the writ petition on the allegation of infringement of fundamental right under Article 19(1)(g) at the instance of respondent company alone was not maintainable.

The issue whether a company can seek information came up before the Central Information Commission in a number of cases. It was held by the double bench of CIC in the case of *Inder Grover Vs Ministry of Railways* decided on 27/6/2006 [(Inder Grover Vs Ministry of Railways,

CIC/OK/A/2006/00121)] that it would have been in order if the CPIO had declined the information under Section-3 of the Act as the Appellant had applied as the Managing Director of the Company and not as citizen of India.

In the case of *Bibhav Kumar Vs. University of Delhi* decided on 3/7/2006[(*Bibhav Kumar Vs. University of Delhi* decided on 3/7/2006 (CIC/OK/A/2006/00050))] the double bench of the Commission held that “the Commission could not agree with the PIO’s contention that the information was sought on behalf of an institution. The Appellant had applied in his own name and had only given his address as that of an NGO for the purpose of correct delivery of post. He had informed the PIO about the change of address. Thus merely giving the address of an NGO does not imply that the institution was asking for the information” In this case, the applicant as a citizen submitted RTI Application and merely used the address of an NGO for communication.

In the case of *J.C. Talukdar Vs. C.E.(E) CPWD Kolkata*[(*J.C. Talukdar Vs. C.E.(E) CPWD Kolkata* (CIC/WB/C/2007/ 00104 & 105 dated 30/3/2007))] , the Applicant Shri. Talukdar, requested for certain information from CPWD, Kolkata, in his capacity as Managing Director of one Ganesh Electric Stores. This application was made in his name and under his signature. The said request was refused under Section 3 of the RTI Act. Consequently Shri. Talukdar filed an appeal before CIC. In this case, the CIC held that -

This is at heart a question of whether a Company or its Director will fall under the definition of citizen under the RTI Act 2005. A company or a Corporation is a “legal person” and, as such, it has a legal entity. This legal entity is distinct from their shareholders, Managers or Managing Directors. This is a settled position in law since the Solomon’s case decided long back by the House of Lords. They have rights and obligations and can sued and are sued in a Court of Law. Section 3 of the RTI Act 2005 confers “Right to Information” on all “CITIZENS”.

A “Citizen” under the Constitution Part II that deals with “citizenship” can only be a natural born person and it does not even by implication include a legal or a juristic person Section 2(f) of the Citizenship Act defines a person as under: **“Person” does not include a company, an association or a Body of individuals whether incorporated or not.**” The objective of the Right to Information Act is to secure access to information to all citizens or order to promote transparency and accountability. The Hon'ble Supreme Court in *Bennett Coleman & Co. and Ors Vs. Union of India*[(*Bennett Coleman & Co. and Ors Vs. Union of India* (decided in the year 1973))] (decided in the year 1973) held that a shareholder is entitled to protection of Article 19 and that an individual’s right is not lost by reason of the fact that he is a shareholder of the company.

The Bank Nationalization case has also established the view that the fundamental rights of shareholders as citizens are not lost when they associate to form a company.

In *Delhi Cloth and General Mills Co. Ltd*[(*Delhi Cloth and General Mills Co. Ltd* (decided on 21/7/1983))], the Apex Court observed that the judicial trend is in the direction of holding that in the matter of fundamental freedoms guaranteed by Article 19, the right of shareholder and the company which the shareholders have formed are rather co-extensive and the denial to one of the fundamental freedoms would be denial to the other.

Even though, therefore the companies and Corporations have not been held to be a citizen, there are number of cases where the Apex Court has granted relief to petitioner companies. One of the case, which can be cited as an example is the **Express Newspaper case**. But in such cases, the petitioners have claimed fundamental rights as shareholders or editors of the Newspapers companies. The same was the situation in *Sakal Papers Pvt. Ltd. Case*.

A question may arise as to whether the case of a **Firm is different from that of a company?** In this regard following observations of *Chagla, C.J. in Iron and Hardware (India) Co. Vs. Firm Sham Lal and Brothers (AIR 1954 Bom 423)* are pertinent:

“In my opinion it is clear that there is no such legal entity as a firm. A firm is merely a compendious way of describing certain number of persons who carry o business as partners in a particular name, but in law and in the eye of the law the firm really consists of the individual partners who go to constitute that firm. Therefore, the persons before the tribunal are the individual partners of the firm and not a legal entity consisting of the firm.”

Even if it were conceded that a company or a corporate body is a legal entity distinct from its shareholders and it is not in itself a citizen, it is a fact that all superior courts have been admitting applications in exercise of their extraordinary jurisdiction from Companies, Societies and Associations under Article 19 of the Constitution of which the Right to Information Act, 2005 is child. Very few petitions have been rejected on the ground that the applicants / petitioners are corporate bodies or Companies or Associations and, as such, not “citizens’. This Commission also has been receiving sizeable number of such applications from such entitles. If the Courts could give relief to such entities, the PIOs also should not throw them out on a mere technical ground that the applicant / appellant happens to be a legal person and not a citizen.

In conclusion we direct that an application / appeal from an Association or a Partnership Firm or a Hindu Undivided Family or from some other group of individuals constituted as a body or otherwise should be accepted and allowed. The CPIO, CPWD, Kolkata will dispose of the present application of Shri Talukdar accordingly, as mandated by Sections 6 and [7 of the RTI Act, 2005](#). In the case of *Secretary, Cuttack Tax Bar Association Vs. Commissioner of Income Tax*[(Secretary, Cuttack Tax Bar Association Vs. Commissioner of Income Tax (CIC/AT/A/2007/00410 decided on 03/03/2008)], the Full Bench of CIC held that –

27. In the present case, the appellants have come as a distinct legal entity. From the records it appears that the application under the Right to Information Act was submitted on 6th September, 2006 in the name of the Association. The application was signed by the Secretary, Shri Gopinath Padhi whose name as an individual can be ascertained only from the Letter Head of the Association and his signature per-se does not signify identity of the signatory. The first appeal has also been filed, not in the name of any individual citizen, but by the Secretary, Cuttack Bar Association and it has been signed by Shri Natbar Panda who seems to have subsequently taken over as Secretary of the Association. Similarly, the 2nd appeal before this Commission has not been filed in the name of any individual citizen but by the Secretary of the Cuttack Bar Association and it has been signed by Shri Natbar Panda as Secretary for and on behalf of the Association. From this, it is clear that the signatories to the application and the appeal under the RTI Act are two distinct individuals. It, therefore, **leaves no doubt that it is the Association which is the applicant and the appellant as a distinct legal entity and the Association or its Secretary in its official designation cannot be treated as “citizen” in the law.**

28. The appeal petition, therefore, stands dismissed. The party will, however, still have the liberty to make a de novo application but in such cases, it **must be an application of one or some of its members, in their capacity as citizens.**

In the case of *Kuljit Singh Vs. Power Finance Corporation Ltd* (CIC/AD/A/2012/000570 etc 20/5/2013), the issue whether appellant Kuljit Singh is entitled to seek information on behalf of Ernst & Young ( an incorporated company ) has come up before the Full Bench of Central Information Commission, in which the Commission held that –



50. It has been vehemently contended by the counsel for Respondent that appellant is not entitled to seek information on behalf of Ernst & Young. It is his contention that Board of Directors of Ernst & Young has no authority to authorize the appellant to seek information under Section-3 of the RTI Act. Information can be sought only by a citizen of India under Section-3. It cannot be sought by a legal entity such as Ernest & Young. He, therefore, pleads that all the appeals must be dismissed off-hand on this ground alone.

51. The counsel for appellant vehemently challenges this contention. According to him, officers and representatives of the company have a right to seek information for the company. He has relied on this Commission's decision dated 30.3.2007 in Complaint[(CIC Complaint no. CIC/WB/C/2007/00104 & 105 (Talukdar Vs CPWD))], wherein it was held that if the courts could give relief to the companies, societies and associations, PIOs should not throw out the request for information on the mere technical ground that applicant/appellant happens to be a legal person and not a natural person.

52. We are not inclined to accept the submission made by the counsel for the Respondent. It is true that appellant has sought the impugned information on behalf of M/s Ernst & Young and has regularly appeared before the Commission to canvass his case. The fact, however, remains that appellant is a citizen of India and this proposition has not been challenged on behalf of PFCL. Even if the appellant is seeking this information on behalf of M/s Ernst & Young, he is doing so as a citizen of India u/s 3 of the Act. The Commission, therefore, is not inclined to take a hyper-technical view in the matter. In view of the precedent cited by the counsel for the appellant adverted to herein above and also by taking a pragmatic view in the matter, we hold that the appellant is well within his rights u/s 3 to seek the impugned information.</blockquote>

## Conclusions

- When an RTI Application is made by a shareholder or a Managing Director or Director or Official of a company or any legal entity, under his name and signature, (even when using the company/association Letter Head), his status as a citizen does not cease to exist and therefore the RTI application is maintainable.
- When an RTI Application is made and signed by its Managing Director or Director or Secretary under official designation, without indicating the name of person, it is the #Company or #Association which is the applicant.
- As a distinct legal entity, the Association or its Secretary in its official designation cannot be treated as "citizen" in law and therefore the RTI application is not maintainable.

## Source:

1. [Who can demand information under rti act?](#) by RAVEENA\_O blog Post
2. [a citizen \(Natural person\) can seek information](#) by Manoj B. Patel

## More Common terms under RTI

- [Annual Confidential Report](#)
- [Citizenship under RTI Act 2005](#)
- [Competent Authority under RTI Act](#)
- [Composite Petition under RTI Act](#)

- [Deemed PIO](#)
- [Disproportionate Diversion of Resources](#)
- [What is Fiduciary Relationship](#)
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