

CENTRAL INFORMATION COMMISSION
Complaint Nos.CIC/WB/C/2007/00104 & 105 both dated 30.3.2007
Right to Information Act 2005 – Section 18

Appellant - Shri J.C. Talukdar
Respondent - C.E. (E), CPWD, Kolkata

Facts:

Shri J.C. Talukdar of Pan Bazar, Guwahati made two applications to C.E. (E), ER of CPWD Kolkata on 16.2.07, seeking the following information u/s 6(1) of the RTI Act, 2005 on:

1 (a) as to whether a site in Tezpur was handed over in stipulated date in accordance with the Agreement, (b) as to whether on which date the civil fronts were released to us for execution of electric works (c) the date of final completion of the civil works of the building – C/o of resdl. & non-resdl. Accommodation for 5th Assam Rifles at Chariduar, Assam (SH- Pvdg. IEI & Fans for 84 Nos. T-I Qrs. Against agreement No. 08/SE(E)/EE(E)/TZCED/2001-2002;
& 2 release of civil fronts by the civil contractor for residential and non-residential accommodation for 5th Assam Rifles at Chariduar, Assam against agreement no 33 /EE(E)/EE(E)/TZCED/2004-2005, together with some related information.

A fee of Rs 50/- in one case and Rs 30/- in the other was submitted with the requests.

This information was refused by Shri TK Das Dy Director(Admn) through two letters dated 21.3.07, although in the case listed at 1 above, it had been forwarded to EE (EL) Tezpur Central Electric Division on 22.2.'07 requesting that information relevant to his Division be supplied to appellant Shri Talukdar 'urgently', purely on the grounds that it did not fall within sec. 3 of the RTI Act, and the fee returned. Shri Jyotish Chandra Talukdar, Managing Director of

Ganesh Electric Stores has therefore moved two complaint before us u/s 18(b) (c) & (e) of the RTI Act, even though he describes these as "Appeal".

DECISION NOTICE

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 sue 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 in order to promote transparency and accountability. The Hon'ble Supreme Court in Bennett Coleman & Co. and Ors. Vs. Union of India (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. (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. (Para 12) 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. v. 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 on 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 share holders 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 RTI 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 entities. 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 Secs. 6 and 7 of the RTI Act, 2005 within thirty days of the receipt of this Decision Notice

Notice of this decision be given free of cost to the parties.

(Wajahat Habibullah)
Chief Information Commissioner
17.5.2007

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges, prescribed under the Act, to the CPIO of this Commission.

(L.C. Singhi)
Addl. Registrar
17.5.2007