

Amritha Nair vs National Board Of Examinations on 30 March, 2017

CENTRAL INFORMATION COMMISSION
August Kranti Bhawan, Bhikaji Cama Place,
New Delhi-110066

F. No.CIC/YA/C/2016/000206

Date of Hearing : 16.03.2017
Date of Decision : 16.03.2017

Appellant/Complainant : Dr. Amritha Nair

Respondent : National Board of Examination
Through: Mr. Pankaj Bharadwaj,
Advocate

Information Commissioner : Shri Yashovardhan Azad

Relevant facts emerging from appeal:

RTI application filed on : 09.02.2016
PIO replied on : 14.03.2016
First Appeal filed on : 29.03.2016
First Appellate Order on : 11.05.2016
2nd Appeal/complaint received on : 30.05.2016

Information sought

and background of the case:

Vide RTI application dated 09.02.2016, the complainant sought copy of marked answers and other details in the online DNB CET 2016-Reg. The CPIO replied vide letter dated 14.03.2016. Not satisfied with the response received from CPIO, the appellant filed first appeal. The FAA vide order dated 11.05.2016 disposed of the first appeal. Feeling aggrieved, the appellant approached the Commission.

Relevant facts emerging during hearing:

The appellant is absent while the Respondent is represented by an Advocate during the hearing. Respondents have submitted as follows:

1. That AIPGMEE is conducted by Answering Respondent once every year.

AIPGMEE consists of 300 multiple choice, single correct response questions in English language only, is to be taken in a single day. The syllabus for AIPGMEE is well defined. The various topics and sub-

topics covered in examination has been indicated in the information Bulletin for AIPGMEE. The salient features of AIPGMEE are as follows:-

1.1 There is no Negative marking 1.2 There is no limit to the number of attempts that can be taken by a candidate.

1.3 There is no age bar.

2. The MCQs obtained are of final MBBS level. The faculty members/subject matter experts associated with question bank are from Govt. Medical Colleges and are involved in undergraduate training/teaching and research.

3. It is submitted that the question paper is generated by the computer based on the blue print command given to it. The blue print indicates the number of questions to be asked in each subject and based on the blue print the computer generates a question paper from the already validated question bank (without human intervention) and this question paper is delivered to the candidate on their examination day. It is submitted that the Answering Respondent conducts the computer based examination in computer laboratories. It is submitted that the Answering Respondent is the content provider as well as the owner of the examination.

4. It is submitted that subject experts cannot be expected to generate unlimited number of MCQ questions from the limited domain area available to him/her. Hence, it is of paramount importance that MCQ questions are not shared by NBE to the candidates as sharing this limited resource will disturb/jeopardize the whole system of the examination process.

5. It is submitted that the Multiple-Choice Questions with the condition of Final year MBBS standard are limited. It is submitted that human anatomy and physiology does not change with time and with limited choice of syllabus it is not appropriate to disclose the question papers.

6. It is submitted that firstly, the Answering Respondent has to frame questions within the fixed parameters (syllabus), secondly, there is limited number of permutations and combinations available to generate and rotate the questions.

7. That the present examination is not equivalent to any other examination as here the candidates get access to manage the patients with serious diseases. AIPGMEE conducted by the Board is in Public interest to screen the academic competence of the

professional who is to be entrusted with lives of prospective patients, therefore, any kind of dilution will lead of uncalled for interference by the prospective candidates.

8. That in case the question papers and keys are revealed to the general public then the AIPGMEE will lose its purpose of screening the Medical graduates and it will directly compromise the minimum standards of medical education. The candidates would be aware beforehand of the prototype and exact questions with respective answers. It is further respectfully submitted that in case question papers and keys are revealed to the general public then AIPGMEE would become a casualty of the Right to Information Act, 2005 and as such the conduct of an examination of this type for which the questions and answers are available in market would then serve no purpose.

In view of the queries raised by the Commission during the hearing, the Respondent has filed further Submissions alongwith covering letter dated 20.03.2017. It has been submitted by the Respondent that those candidates who have obtained their graduation medical qualification/degree from foreign country (if not statutorily exempted) have to pass Foreign Medical Graduate Examination (FMGE)/Screening Test conducted by the National Board of Examinations before getting registered with State Medical Council. Likewise, in order to obtain admission in DNB training programme, candidates who have obtained their MBBS degree from India or are registered with State Medical Council have to secure a rank in the entrance examination known as DNB-CET. The syllabus for Foreign Medical Graduate Examination (FMGE), All India Post Graduate Medical Entrance Examination (AIPGMEE) and DNB (CET) is final year MBBS level of Indian Universities. All of these examinations viz. FMGE, AIPGMEE and DNB-CET are Multiple Choice Question (MCQ) examinations held in Computer Based Testing (CBT) Format and are more or less of equivalent rank. Thus (i) the syllabus for Foreign Medical Graduate Examination (FMGE), All India Post Graduate Medical Entrance Examination (AIPGMEE) and DNB (CET) is of final year MBBS level of Indian Universities, (ii) the questions in all of these examinations viz. the FMGE, AIPGMEE and DNB-CET examinations are Multiple Choice Question (MCQ) examinations held in Computer Based Testing (CBT) format. On the basis of these similarities, the Respondent has placed reliance on certain decisions of the Hon'ble Commission in the cases of: a) Shri R Seshadri, Delhi Vs CPIO, Medical Council of India, Delhi & CPIO, National Board of Examinations in case number CIC/YA/A/2016/900043 dated 28.02.2017. Another decision relied upon by this Hon'ble Commission wherein identical issue has been decided is of Manish Kumar Sharma V/s CPIO, NBE [CIC/YA/A/2014/001131] dated 07.03.2016 and has held that the question papers & corresponding answer keys cannot be divulged upon a purposive interpretation of Section 8 of the RTI Act, 2005.

DECISION

1. After a detailed hearing of the case, it is noted that Respondent has placed reliance on two decisions of the Commission whereby disclosure of answer keys, question papers etc relating to Super Speciality courses have been denied by the Commission in view of precedent laid down by the High Court of Delhi. Since the issue related to Super Speciality examination and questions thereof have been adjudicated and decided by speaking orders of the Commission, the limited issue to be

decided in this case is:

"Whether DNB CET examination fulfilled the criteria of Super Specialty course akin to FMGE"

2. The Respondent's counsel submitted a written note dated 20.03.2017 which has been discussed in the preceding paragraph. Perusal of the submissions indicate that the features and characteristics of the DNB CET examination is identical to that of Foreign Medical Graduate Examination (FMGE) and All India Post Graduate Medical Entrance Examination (AIPGMEE), inasmuch as the DNB (CET) is of final year MBBS level of Indian Universities like the other two and also because the examination and question format of all the three examinations viz. the FMGE, AIPGMEE and DNB-CET are Multiple Choice Question (MCQ) examinations held in Computer Based Testing (CBT) format. It is the Respondent's case that the course/s are akin to each other and hence in order to protect the question bank comprising of question/s and answer keys and to maintain the standards of medical education, candidates are bound with a Non-disclosure Agreement, by virtue of which the candidates are not supposed to share the question papers even after the examination. This Non Disclosure Agreement and the entire examination scheme is published on the Information Bulletin and being thus made public, the terms of the examination including the Non disclosure agreement are binding on every candidate who undertakes to appear in the examination.

3. The facts of this case appear similar to those decided by the Division Bench of the Delhi High Court while deciding the LPA No. 487/2011 by the decision dated 28.05.2012 in the case of AIIMS vs. Vikrant Bhuria, which discussed the Apex Court decisions of ICAI Vs. Shaunak Satya (2011) 8 SCC 781 as well as CBSE vs. Aditya Bandopadhyay (2011) 8 SCC 497 and held as follows:

"14. We tend to agree with the counsel for the appellant that the judgment of the Apex Court in Shaunak H. Satya (supra) cannot be blindly applied to the facts of the present case. The judgment of the Apex Court was in the backdrop of the question papers in that case being available to the examinees during the examination and being also sold together with suggested answers after the examination. Per contra in the present case, the question papers comprises only of multiple choice questions and are such which cannot be carried out from the examination hall by the examinees and in which examination there is an express prohibition against copying or carrying out of the question papers. Thus the reasoning given by the Supreme Court does not apply to the facts of the present case.

15. We are satisfied that the nature of the examination, subject matter of this appeal, is materially different from the examination considered by the Supreme Court in the judgment supra. There are few seats, often limited to one only, in such super-speciality courses and the examinees are highly qualified, post graduates in the field of medicine.

.....

16..... if question papers are so disclosed, the possibility of the examination not resulting in the selection of the best candidate cannot be ruled out. It is pleaded that knowledge of the question papers of all the previous years with correct answers may lead to selection of a student with good memory rather than an analytical mind. It is also pleaded that setting up of such question papers besides intellectual efforts also entails expenditure. The possibility of appellant, in a given year cutting the said expenditure by picking up questions from its question bank is thus plausible and which factor was considered by the Supreme Court also in the judgment aforesaid.

17. We also need to remind ourselves of the line of the judgments of which reference may only be made to State of Tamil Nadu Vs. K. Shyam Sunder AIR 2011 SC 3470, The Bihar School Examination Board Vs. Subhas Chandra Sinha (1970) 1 SCC 648, The University of Mysore Vs. C. D. Govinda Rao AIR 1965 SC 491, Maharashtra State Board of Secondary and Higher Secondary Education Vs. Paritosh Bhupeshkumar Sheth (1984) 4 SCC 27 holding that the Courts should not interfere with such decisions of the academic authorities who are experts in their field. Once the experts of the appellant have taken a view that the disclosure of the question papers would compromise the selection process, we cannot lightly interfere therewith. Reference in this regard may also be made to the recent dicta in Sanchit Bansal Vs. The Joint Admission Board (JAB) (2012) 1 SCC 157 observing that the process of evaluation and selection of candidates for admission with reference to their performance, the process of achieving the objective of selecting candidates who will be better equipped to suit the specialized courses, are all technical matters in academic field and Courts will not interfere in such processes...."

Emphasis supplied

4. Discussing the extent of disclosure, the Division Bench of the Delhi High Court in the same judgment of Vikrant Bhuria has also observed:

".....18. We have in our judgment dated 24.05.2012 in LPA No.1090/2011 titled Central Board of Secondary Education Vs. Sh. Anil Kumar Kathpal, relying on the Institute of Chartered Accountants of India Vs. Shaunak H. Satya (2011) 8 SCC 781 held that in achieving the objective of transparency and accountability of the RTI Act, other equally important public interests including preservation of confidentiality of sensitive information are not to be ignored or sacrificed and that it has to be ensured that revelation of information in actual practice, does not harm or adversely affect other public interests including of preservation of confidentiality of sensitive information. Thus, disclosure of, marks which though existed, but were replaced by grades, was not allowed. Purposive, not literal interpretation of the RTI Act was advocated.

19. We may further add that even in Central Board of Secondary Education Vs. Aditya Bandopadhyay (2011) 8 SCC 497 that Apex Court though holding that an examining body does not hold evaluated answer books in fiduciary relationship also held that the RTI Act seeks to bring about a balance between two conflicting interests, as harmony between them is essential for preserving democracy i.e. of transparency and accountability on one hand and public interest on the other hand. It was further held that when Section 8 exempts certain information, it should not be considered to be a fetter on the Right to Information, but an equally important provision protecting other public interests essential for fulfillment and preservation of democratic ideas. The Supreme Court further observed that it is difficult to visualize and enumerate all types of information which require to be exempted from disclosure in public interest and the legislature has in Section 8 however made an attempt to do so. It was thus held that while interpreting the said exemptions a purposive construction involving a reasonable and balanced approach ought to be adopted. It was yet further held that indiscriminate and impractical demands under RTI Act for disclosure of all and sundry information, unrelated to transparency and accountability would be counter productive and the RTI Act should not be allowed to be misused or abused.

20. There are no questions of transparency and accountability in the present case.

21. When we apply the tests aforesaid to the factual scenario as urged by the appellants and noted above, the conclusion is irresistible that it is not in public interest that the information sought be divulged and the information sought is such which on a purposive construction of Section 8 is exempt from disclosure....."

5. The Commission has in the past by its decision in the case of Nirav Pradeep Seth versus CPIO, Directorate General of Civil Aviation [CIC/YA/A/2014/000111 & 13] observed as follows:

"....It has been argued that disclosure of these question papers would jeopardize the basic selection process as it would be easy for commercial organizations to disseminate questions and answers to make it easier for candidates to qualify without having acquired requisite skills and knowledge. The Commission concurs with the Delhi High Court's decision in AIIMS V. Vikrant Bhuria that knowledge of these question papers of previous sessions/years with correct answers may lead to selection of a candidate with good memory rather than an analytical mind. The conduct of selection process including examinations in such specialized areas as recruitment of pilots and crew operators is to be handled with utmost care and responsibility, in order to promote and maintain the highest level of safety and quality in civil aviation and above all, the larger public interest. The Commission, having perused the Supreme Court's decision in Shaunak H. Satya, quoted by the appellant and the decisions of the Commission, cited by the respondent, is of the view that disclosure of information sought by the appellant will not only seriously compromise the quality of the examination process but would endanger the safety of the public...."

6. The ratio of the decision in the case of IIT vs. Navin Talwar relied upon by the Appellant is not applicable in the instant case because ground taken for denial in that case was Section 8 (1)(e) of the RTI Act and not of limited question bank, as in the instant case. Likewise the other decision relied upon by the Appellant in the CIC case no. CIC/SA/A/2014/00157 [Ms. Shweta Upadhyay vs. PIO, GGSPI University] is also distinguishable from the instant case since the examination conducted by respondent university in the case referred, was ordinary, post intermediate examination to decide admissions to a graduation course involving neither specialty nor super specialty. Furthermore in the said case, the public authority viz. GGSIP had failed to establish any public interest in holding the question paper as secret or confidential. The Commission finds the last decision relied upon by the Appellant viz. Saurabh Yadav vs. PIO, NBE is also not applicable to the instant case at hand since no issue regarding Super Specialty examination was discussed in the case of Saurabh Yadav.

7. In the light of the submissions of the Respondent, past decisions of this Bench and the ratio of the aforementioned decisions of various Courts laying down the precedent very clearly, it is noteworthy that the purpose of public interest reigns supreme while establishing the rule of law. Disclosure or otherwise of information shall also have to be tested on the same touchstone of larger public good. In the instant case disclosure of information would only serve the limited private interest of the appellant, who incidentally has not even bothered to appear or make any written submission before the Commission, save filing of the Second Appeal. The Commission is in agreement with the Respondent that the medical profession requires highest degree of precision and professional competence since they deal with the sensitive and dynamic subject of public health. Disclosure of any information which diminishes the rigour of the Screening process of selection and/or training of the medical experts will naturally have a direct detrimental impact on the quality of doctors practising in the country. Thus disclosure of information as sought by the appellant in this case will open floodgates for all similarly situated persons to secure information which would be prejudicial to the larger public interest. Undoubtedly, the settled legal position of law on this issue is that the individual rights must be sacrificed at the altar of larger or societal good lest such private/individual interest run the risk of eclipsing the larger collective interest of the society.

8. Under the facts and circumstances, the Commission is of the considered opinion that information relating to the examination as sought by the Appellant need not be disclosed to ensure safe keeping and secrecy of the question bank and to ensure that the doctors who successfully pass the examination after undergoing the rigours of the screening process are able to serve the cause of this noble profession better. And public disclosure of questions would clearly lead to dilution of the exacting minimum standards of medical education. The candidates with prior knowledge of the prototype and exact questions with respect answers would prevent the exercise of an analytical mind of the doctors, thus defeating the very purpose and objective of this screening test. Moreover, it is also noted that the appellant as a candidate was aware of the Non Disclosure agreement and the rationale behind such Non Disclosure Agreement before undertaking the examination. Being unsuccessful in the examination, now the appellant is prohibited by law of estoppel from challenging the said concluded contract.

There is no doubt left that disclosure of the information as sought by the appellant is not warranted in the light of the aforementioned discussion, in keeping with the spirit of the RTI Act and to

maintain a practical regime of disclosure of information.

The appeal is thus dismissed.

(Yashovardhan Azad) Information Commissioner 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.

(R.P.Grover) Designated Officer Copy to:-

Nodal Officer - RTI Cell, First Appellate Authority under Deputy Director & RTI CPIO, National Board of Additional Director & Examinations (Ministry of FAA, National Board of Health & Family Examinations (Ministry of Welfare), Medical Enclave, Health & Family Ansari Nagar, Mahatma Gandhi Welfare), Medical Enclave, Marg, New Delhi-110029. Ansari Nagar, Mahatma Gandhi Marg, New Delhi-110029.

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