

**BEFORE THE EXECUTIVE DIRECTOR AND FIRST APPELLATE AUTHORITY
INSOLVENCY AND BANKRUPTCY BOARD OF INDIA**

2nd Floor, Jeevan Vihar Building
Sansad Marg, New Delhi- 110 001

Dated: 22st May, 2024

**Order under section 19 of the Right to Information Act, 2005 (RTI Act) in respect of RTI
Appeal**

IN THE MATTER OF

Yathish H

... Appellant

Vs.

Central Public Information Officer

The Insolvency and Bankruptcy Board of India

2nd Floor, Jeevan Vihar Building

Sansad Marg, New Delhi - 110 001.

... Respondent

ORDER

1. The Appellant has filed the present Appeal dated 2nd May 2024, challenging the communication of the Respondent dated 10th April 2024 with regard to his RTI Application No. ISBBI/R/T/24/00012 filed under the Right to Information Act, 2005 (RTI Act). In the RTI Application, the Appellant had requested for question papers with key answers in soft copy for the IBBI (Land & Building) Valuers examination for all sessions from June 2023 to February 2024.
2. The Respondent denied the same stating that the disclosure of question papers compromises the integrity of the whole examination and therefore, cannot be disclosed. The said disclosure is exempted under section 8(1)(d) of the RTI Act.
3. Aggrieved by the response of the Respondent, in this Appeal, the Appellant has broadly submitted that the requested information does not fall within the exemption under section 8(1)(d) of the RTI Act.
4. I have carefully examined the application, the response of the Respondent and the Appeal. Before examining the request, I deem it appropriate to deal with scope of 'information' and right to receive the information under the RTI Act. It is noted that in terms of section 2(f) of the RTI Act '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.*".
5. The aforesaid definition contemplates providing of material in the forms of records, documents, opinions, advice, etc. It does not include giving opinions on issues raised or providing clarifications or advice to inquiries. Section 2(j) of the RTI Act defines the "*right*

to information” in term of information accessible under the Act which is held by or is under the control of a public authority and which can be disclosed subject to exemptions under section 8 of the RTI Act. Thus, if the public authority holds any ‘information’ in the form of data, statistics, abstracts, etc. an applicant can have access to the same under the RTI Act subject to exemptions under section.

6. It is also clear that the “right to information” under section 3 of the RTI Act is circumscribed by RTI Act itself as the right is limited within scope of ‘information’ as defined under section 2(f) and is subject to other provisions including those under section 8 of the Act. As stated in the Guide on the RTI Act issued by the DoPT under OM No. 1/32/2013-IR dated 28th November 2013 –

“The Public Information Officer is not supposed to create information that is not a part of the record of the public authority. The Public Information Officer is also not required to furnish information which require drawing of inference and/or making of assumptions; or to interpret information; or to solve the problems raised by the applicants; or to furnish replies to hypothetical questions.”

7. In the instant case, the Appellant has requested for questions and answers of the Valuation examination conducted by IBBI. The Respondent has claimed exemption under section 8(1)(d) stating that the disclosure of the question/s will violate the integrity of the question bank. It is noted that section 8(1)(d) exempts disclosure of information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless it is shown that the larger public interest warrants the disclosure of such information. While applying these provisions, there need to be proper balancing of private right and public interest taking into account the facts and circumstances and exemptions provided in the RTI Act. It is relevant to note that the questions asked in the Valuation Examinations are the intellectual property of the IBBI and are held in confidence. The IBBI prepares, updates and maintains a pool of questions which are subject to repetition on a random basis and reuse in the various upcoming Examinations. The Examinations are conducted online and the candidates appearing are not allowed to take printouts, these questions and the corresponding answers are also not provided to any of the candidates who appear for the Examination. Hence, disclosure of the questions and answers will not only be against the confidentiality and integrity of the entire Examination process but also affect the competitive position of the other aspirants as the aspirants having questions and answers in advance will have an undue advantage as the questions are likely to be repeated in the future Examinations. Moreover, setting up of question papers requires intellectual efforts and verification from panel of experts. The disclosure would increase the expenditure and the IBBI may also be required to off-set the estimated surge by increasing the examination fees. Hence, the cost of disclosing the question bank and the answers given by a candidate would be huge and against the public interest.
8. In *All India Institute of Medical Sciences v. Vikrant Bhuria*, Hon’ble Delhi High Court vide its order dated 28th May 2012 held that in super-specialty subjects with limited number of questions available in the question bank, the disclosure of such questions would encourage the students appearing for the exam to memorize the answers for the exam, thereby adversely affecting the selection of good candidates. In this regard, following observations of Hon’ble High Court

are relevant to mention: "...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... . 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." Further, in *All India Institute of Medical Sciences vs. Prakash Singh*, Hon'ble Delhi High Court vide its order dated 6th December 2012, while setting aside the decision of CIC to disclose the question papers and answer keys pertaining to the MBBS Entrance Examination, observed that:- "...there is limited number of questions available to the petitioner, and that if, this information is put out in public domain then, it would be difficult for the petitioners to select candidates on the basis of their analytical ability. In other words, the examinee may perhaps take to the rote route to qualify the examination. they would be loathe to interfere in areas where academicians, being experts, have expressed a view, to the effect that, disclosure of question papers and keys would compromise the selection process."

9. Hon'ble Central Information Commission in *R. Seshadri Vs. CPIO, Medical Council of India, Delhi and Ors*, vide order dated 28th February 2017 observed that: "The question bank is limited and has been compiled with questions being contributed by the experts in the area. These experts have forfeited their proprietary right over the questions supplied to the NBE. The NBE does not have any commercial interest in guarding this question bank zealously. The NBE have also been applauded for conducting these exams efficiently over the years. Given the situation, if public disclosure of questions is allowed, this would lead to dilution of standards by encouraging "cramming" which would be against the objectives of this screening test."
10. In view of the above, the Respondent has no obligation to disclose the information asked by the Appellant which is exempted from disclosure in terms of section 8(1)(d) of the RTI Act. The Appellant has not established any larger public interest for its disclosure. In fact, the disclosure of such information would not serve any public purpose rather it would harm the competitive confidence of aspirants in upcoming examinations and would in turn compromise with the public interest. I, therefore, find that there is no need to interfere with the decision of the Respondent.
11. The Appeal is dismissed accordingly.

Sd/
(Jithesh John)
First Appellate Authority

Copy to:

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