

**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: 8th July, 2022

RTI Appeal Registration No. ISBBI/A/E/22/00022

IN THE MATTER OF

CA Rajat Kumar Mehra

... 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 13th June 2022, challenging the communication of the Respondent dated 8th June 2022 with regard to his RTI Application No. ISBBI/R/E/21/00122 dated 13th May 2022 filed under the Right to Information Act, 2005 (RTI Act). In the RTI Application, the Appellant has *inter-alia* requested for the following –

“1. (a) *Kindly provide list of examinations, if any, conducted under a statute in India where different questions are asked from different aspirants and examinees.*

(b) *Kindly provide records/ details of logarithm/ artificial intelligence used by your organization to ensure parity as to level of difficulty when different question of asked from different students. As an aspirant, clearing of examination is a matter of favour and luck. Success is achieved by those get easy questions on their system and failing aspirants get tricky questions.*

2. ...

(c) *Section 4(1)(d) of the RTI Act casts responsibility on every public authority to provide reasons for his decision (to fail) to the affected persons. Kindly provide me records of my failure in SFA Examinations since December, 2021 under Registration No. NISM-202100120643. Records of my failure should contain Questions asked from me. Answer given by me and Correct option which this examinee should opt for along with reasons and justification...”*

2. Aggrieved by the response of the Respondent, the Appellant has broadly submitted the following: –
- a. With regard to point 1(a), (i) the Respondent in his reply has not quoted the question of the Appellant properly in his reply and has replaced ‘and’ with ‘/’, (ii) There is inherent discrimination and inequality in asking different questions from different examinees, (iii) the Respondent has failed to provide the information available with him and has avoided quoting section 8 of the RTI Act, and (iv) the reply of the Respondent is correct in light of reply to another RTI application of Appellant dated 14.09.2021.

- b. With regard to point 1(b), (i) the Respondent has not quoted the question of the Appellant properly in his reply, (ii) the information is denied without citing section 8, (iii) there is absence of application of human as well as artificial intelligence and in name of examination, lottery business is promoted by IBBI.
 - c. With regard to point 2(c), (i) the Respondent has concocted the language of information, (ii) the records of questions, answers and correct questions along-with reasons and justifications be provided to the Appellant.
 - d. Lastly, it is submitted that the provisions of the RTI act must be complied in letter and spirit and the Respondent has given incorrect, *mala fide*, vague, misleading reply. The Appellant has also requested for personal hearing in the matter.
3. I have carefully examined the application, the response of the Respondent and the Appeal. The Appellant has requested for hearing. It is noted that RTI Act does not contemplate a mandatory right of hearing. Further, principles of natural justice apply in cases when any decision is taken against right or privileges of a person. If no right or privilege is infringed, the hearing would not be mandatory under the RTI Act. Therefore, 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."*
4. 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. 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."
5. In the instant case, the Appellant has requested for (a) list of all examinations in India where different questions are asked from different examinees and aspirants, and (b) records/details of logarithm/artificial intelligence used by IBBI to ensure parity of difficulty of examination. The Respondent has stated that the said information is not available. Upon a perusal of the Appellant's request for information as made through the instant queries of his application, I

find that the query in point (a) is vague and not specific and is also roving in nature. In this context, I note that in the matter of *Shri S. C. Sharma vs. CPIO, Securities and Exchange Board of India* (Decision dated August 30, 2012), the Hon'ble CIC held that *"Since the Appellant had not clearly stated what exact information he wanted, the CPIO could not have provided any specific information to him."* In addition, I note that in the matter of *Mrs. Bina Saba vs. CPIO, Securities and Exchange Board of India* (Decision dated November 6, 2012), the Hon'ble CIC held: *"It must be remembered that Section 2(f) of the RTI Act defines information as a material or virtual record. The citizen has every right to get copies of such records held by any public authority including the SEBI. However, in order to get the copies of such records, the information seeker has to specify the details of the records she wants. In fact, section 6(1) of the RTI Act very clearly states that the information seeker has to specify the particulars of the information sought by him or her."*

6. I, therefore, find that no right is vested in the Appellant to make inquiries and seek clarification by way of making roving inquiries as made in point 1(a) of the request. Further, the Respondent is not obliged to provide a response to query (a) where the information sought is not clear or specific. In addition, the Respondent can provide information which is available and is held by him. He cannot create information which is not part of the record. Accordingly, no further information could have been provided by the Respondent on query 1(b).
7. I noted that in point 2(c) of his request, the Appellant has requested for copy of questions, answers, correct options with reasons and justifications asked to him in SFA Examinations since December, 2021 under Registration No. NISM-202100120643. The Respondent has *inter-alia* provided the details of test centre, test city, questions attempted, number of questions correctly/incorrectly answered, number of questions not attempted etc. and has not provided copy of questions, answers, correct options with reasons and justifications. However, 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 SFA 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 provided the information that could be shared and he had no obligation to disclose the information 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 such disclosure of information. 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.
11. The above findings show that the Appellant does not have right to seek information from the Respondent as asked in point No.1(a) and (b) and he has not shown any public interest in disclosure of information about request in point No. 2(c). I am convinced that this case is not

a fit case to provide personal hearing to the Appellant and matter can be decided based on written submissions in the appeal and material available on record. Accordingly, the matter does not warrant personal hearing on merits.

12. In view of the above, I find no reason to interfere with the decision of the Respondent. The Appeal is disposed of accordingly.

Sd/
(Santosh Kumar Shukla)
First Appellate Authority

Copy to:

1. Appellant, CA Rajat Kumar Mehra.
2. CPIO, The Insolvency and Bankruptcy Board of India, 2nd Floor, Jeevan Vihar Building, Sansad Marg, New Delhi - 110 001.