

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

7th Floor, Mayur Bhawan, Shankar Market,
Connaught Circle, New Delhi- 110 001

Dated: 04th October, 2024

**Order under section 19 of the Right to Information Act, 2005 (RTI Act) in RTI Appeal
Registration No. ISBBI/A/E/24/00033**

IN THE MATTER OF

Manoj Kumar Jain

... Appellant

Vs.

Central Public Information Officer

The Insolvency and Bankruptcy Board of India

7th Floor, Mayur Bhawan, Shankar Market,

Connaught Circle, New Delhi - 110 001.

... Respondent

1. The Appellant has filed the present Appeal dated 30th August 2024, challenging the communication of the Respondent dated 16th August 2024 in his RTI application no. ISBBI/R/E/24/00147. As this Appeal required detailed examination of provisions of RTI Act, same is disposed within 45 days instead of 30 days.
2. The Appellant had raised 10 queries in his RTI Application. He is aggrieved by the responses provided against the 3 queries as bellow –

Question 1:

Please provide the question paper, correct answers, answer sheet of candidate Manoj Kumar Jain

Registration Number: NISM-202400133146

NISM Enrolment Number: 2410254660

This is required as IBBI policy allows up to two questions to be challenged for wrong answers.

Reply Given by Respondent:

Disclosing the questions and/or their answers violates the integrity of live question bank, which is in use. It will breach the confidentiality / secrecy of the live question bank. Hence the information cannot be shared.

Submission in Appeal:

First and foremost, the reason is that this information is not exempted in the RTI act. Secondly, the purpose of asking for this information is to identify questions which do not have any of the four options given. This will in turn help in improving the quality of questions in the question bank.

Under FAQ no. 21 it is mentioned that Candidate's request/s will be considered only when he/she specifically mentions a particular question/s which he/she thinks contain errors. Claim/s to recheck more than two questions shall not be permitted unless the substantive material is provided by the candidate as to why he/she considers errors in such questions.

The matter of fact is the NISM, which takes the exam, does not allow noting down any question while IBBI allows up to 2 questions to be challenged.

The FAQ 21 (FAQs on Valuation Examinations wef 1st May 2024) asks for mentioning the question and providing substantive material also.

If NISM does not allow noting down anything, a candidate will not be able to provide the question and substantive material to challenge the questions.

As these two are contradictory it becomes very important that all the questions and correct answers are provided so that I can challenge them.

Question 9:

Has IBBI audited NISM examination portal before starting using it to ensure that it is suitable for IBBI valuer examination? If YES, provide audit report, if NO, provide reasons why feasibility and suitability audit was not done?

Reply Given by Respondent:

Information exempt u/s 8(1)(d) and (e) of the RTI act.

Submission in Appeal:

Section 8(1)(d) prohibits trade secrets while (e) deals with protection of trust between two parties. The information should be shared if the larger public interest warrants it. Because of the low pass percentage, revealing this information is critical in disproving unfair practices within IBBI and NISM. If this information is not revealed, it harms the valuation students far more.

This section does not apply to the requested information because NISM does not allow noting down anything during the exam and IBBI allows challenging up to two questions as stated in FAQ no. 21. (FAQs on Valuation Examinations wef 1st May 2024).

This clearly establishes that NISM examination portal does not meet all the requirements of IBBI and hence this information must be disclosed. The reply also creates doubt that no such activity was ever done.

Changing the policy of NISM for IBBI exam and allowing students to note up to two questions will help IBBI in implementing its own rules and policy.

Question 10:

Has IBBI arranged independent verification of correct answers marked for the questions or question paper sets used during the exam? If yes, provide name and qualification details of persons who developed questions and name and qualification of persons who validated these questions and proposed answers. Also provide verification report. If verification not done, how and why unverified questions or question papers are used in examination?

Reply Given by Respondent:

Information exempt u/s 8(1)(g) of the RTI act.

Submission in Appeal:

Section 8(1)(g) prohibits information if it endangers the life of a person.

This exemption also does not apply because the purpose of information is to know that qualified persons have validated the questions and answers. It has been noted by many trainers during training sessions conducted by Registered Valuers Organizations (RVO) that many questions that come during exams have no correct answer and IBBI does not reply to any query sent to them in this regard.

This has nothing to do with endangering the life of any person as personal information is not being asked, only qualifications is being asked.

In most cases it is seen, by observation and experience, that questions are randomly picked from various online sources without validation.

This information will also help IBBI to improve its examination system.

3. 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."*
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 inquisitions. 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.
5. 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."
6. In the instant case, the Appellant has requested for questions and answers of the Valuation examination conducted by IBBI. The Respondent has claimed exemption 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. Hence, the cost of disclosing the question bank and the answers given by a candidate would be huge and against the public interest.

7. 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."*
8. 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."*
9. 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.

10. With regard to point 9, the Appellant has asked as to whether IBBI audited NISM examination portal before starting using it to ensure that it is suitable for IBBI valuer examination. If yes, to provide audit report to the Appellant and if no, to provide reasons as to why feasibility and suitability audit was not done. This information is a confidential information of NISM and same is provided to IBBI under commercial confidence. Also, IBBI has received such information from NISM in a fiduciary capacity. Also, all such information pertains to a third-party i.e. NISM. Also, any such information may be used by others to harm the competitive position of NISM, and the Respondent needs to be cognizant of the same. Accordingly, such information is exempted under section 8(1)(d) and 8(1)(e). Also, I am not satisfied how a larger public interest is involved which warrants the disclosure of such information. Lastly, RTI Act cannot be used to get answers to queries as to why a certain thing was done or not done. Accordingly, giving reasons for a certain action is beyond the scope of RTI.
11. With regard to point 10, the Appellant wants to know the name and qualification of the persons who developed questions and name and qualification of persons who validated these questions and proposed answers. It is not clear how the said information is exempted under section 8(1)(g) of the RTI Act which exempts the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes. In this regard, it is relevant to understand the scope of section 8(1)(j) of the RTI Act. Section 8(1)(j) exempts information which relates to personal information, the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless a larger public interest justifies the disclosure of such information. If the information sought for is personal and has no relationship with any public activity or interest or it will not sub-serve larger public interest, and the Respondent is not legally obliged to provide that information. The Hon'ble Supreme Court in *Bihar Public Service Commission vs. Saiyed Hussain Abbas Rizvi and Ors.* (Civil Appeal No. 9052 of 2012 (Arising out of SLP (C) No. 20217 of 2011) vide Order dated 13th December 2012 observed that –
“In terms of this provision, information which relates to personal information, the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual would fall within the exempted category, unless the authority concerned is satisfied that larger public interest justifies the disclosure of such information. It is, therefore, to be understood clearly that it is a statutory exemption which must operate as a rule and only in exceptional cases would disclosure be permitted, that too, for reasons to be recorded demonstrating satisfaction to the test of larger public interest. It will not be in consonance with the spirit of these provisions, if in a mechanical manner, directions are passed by the appropriate authority to disclose information which may be protected in terms of the above provisions.”

In *Canara Bank v. C.S. Shyam and Anr.* (Civil Appeal No. 22 of 2009) vide decision dated 31st August 2017, the Hon'ble Supreme Court observed as follows -

“In our considered opinion, the aforementioned principle of law applies to the facts of this case on all force. It is for the reasons that, firstly, the information sought by respondent No.1 of individual employees working in the Bank

was personal in nature; secondly, it was exempted from being disclosed under Section 8(j) of the Act and lastly, neither respondent No.1 disclosed any public interest much less larger public interest involved in seeking such information of the individual employee and nor any finding was recorded by the Central Information Commission and the High Court as to the involvement of any larger public interest in supplying such information to respondent No.1.”

In H.E. Rajashekarappa v/s State Public Information Officer & Others, Writ Petition No.10663 of 2006 (GM-RES) decided on, 01 July 2008, the Hon’ble High Court of Karnataka observed that –

“The object of the Act is to provide right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. In view of the above provisions excerpted, it cannot be said that Section 2(f) of the Act encompasses the personal information of the officials of the public authority. The intention of the legislation is to provide right to information to a citizen pertaining to public affairs of the public authority. Therefore, the respondent No.3 had no right under the Act to seek personal information of the petitioner...”

Further, the First Appellate Authority in Dr. Shivani Sandesh Mayekar Vs. CPIO, SEBI, Mumbai (Appeal No. 1608 of 2013) vide Order dated February 21, 2013 had also observed that -

“the disclosure of information relating to the name, designation, etc. of SEBI official(s), is exempt under sections 8(1)(g) and 8(1)(j) of the RTI Act. In view of these observations, I find that the respondent was justified in invoking the provisions of sections 8(1)(g) and 8(1)(j) of the RTI Act, in his response, while denying the information as sought by the appellant, through the instant query.”

12. In view of above, I hold that the name and qualification of the persons who developed questions and name and qualification of persons who validated these questions and proposed answers, is exempted under section 8(1)(j) of the RTI Act. Further, I am also not satisfied as to how a larger public interest is involved. As such I find no valid ground to outweigh the scope of exemption under section 8(1)(j).
13. In view of the above, I find that there is no need to interfere with the decision of the Respondent. The Appeal is accordingly dismissed.

Sd/
(Jithesh John)
First Appellate Authority

Copy to:

1. Appellant, Manoj Kumar Jain.
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