

**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 June, 2022

RTI Appeal Registration No. ISBBI/A/E/22/00018

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 10th May 2022, challenging the communication of the Respondent dated 6th October 2021 with regard to his RTI Application No. ISBBI/R/E/21/00155 dated 14th September 2021 filed under the Right to Information Act, 2005 (RTI Act). In the RTI Application, the Appellant has requested for the following –
*“1. Kindly confirm that same questions are not asked to all aspirants on a day in Limited Solvency and Valuation Examinations.
2. Copy of decision/regulation permitting asking of different questions to different students from a common question bank held with you from an aspirant of Limited Insolvency and Valuation Examinations.
3. Soft and hard copies of the questions bank held with you with their answers on records wherefrom questions are asked to an aspirant to Limited Insolvency and Valuation Examinations.
4. Number of questions/ answers in your question bank from where you ask questions to aspirants for Limited Insolvency and Valuation Examinations.
5. When the questions/ answers were last updated and modified in view of amendments.
6. If law has changed on or after 01.01.2021 the answer held in your questions is on basis of earlier law or law in force at present.
7. If law has changed, whether a student is expected to answer the position of law till 31.12.2021 or actual law as on date of examination.
8. Copy of the decision/regulation, if any, which permit the officers at IBBI not to maintain records of questions asked from a student and his answers which result in his passing or failing.”*
2. Aggrieved by the response of the Respondent, the Appellant has broadly submitted the following:–
 - a. The Respondent has antedated its Order vide e-mail on 22.10.2021 as 06.10.2021. The delay in submission of the Appeal may be condoned as due to Covid there was general condition of delays.
 - b. A confirmation be provided categorically that different questions are asked to different aspirants on the same day for same examination.

- c. Information as to decision or regulation which permits discrimination in asking questions amongst aspirants may now be furnished at this appellate stage within IBBI.
 - d. The soft and hard copies of the question bank held with IBBI with answers be ordered to be provided as Section 8(1)(d) of the RTI Act has no applicability. Also, there is no mention or indication as to third party whose commercial confidence, trade secret or intellectual property is highly misconceived and against the law. Also, there is violation of copyrights of books, foreign and Indian institutions and persons and using their work for your examinations and misleading even the Government. Also, larger public interest warrants disclosure of question bank.
 - e. Incorrect and evasive reply was given to the Appellant in para 5 to 7 of his query.
3. I have carefully examined the Application, the response of the Respondent and the Appeal and find that the matter can be decided based on the material available on record. Before dealing with merits of Appeal, I deem it necessary to deal with the contention of the Appellant regarding the date of response of the CPIO and his delay condonation request. The Appellant has claimed that the Respondent has sent the response on 22.10.2021 and has ante-dated it to 06.10.2021. However, from the records, I note that the date of impugned response of the CPIO is 06.10.2021 and claim of the Appellant is belied on account screenshot of the disposal on the RTI Portal which was as given hereunder clearly reflecting the disposal date as 06.10.2021.

SN.	Action Taken	Date of Action	Action Taken By
1	RTI REQUEST RECEIVED	14/09/2021	Nodal Officer
2	REQUEST FORWARDED TO CPIO	14/09/2021	Nodal Officer
3	REQUEST FORWARDED TO DEEMED PIO	15/09/2021	Rajesh Kumar-(CPIO)
4	REQUEST DISPOSED OF	06/10/2021	Rajesh Kumar-(CPIO)
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4. Accordingly, I do not find any fault on the part of the Respondent on this count since the Application was disposed of by him within 30 days of receipt of the RTI Application. As per section 19(1) of the RTI Act, an aggrieved person may prefer the first appeal within thirty days from the date of receipt of the response from the CPIO. In the instant case, the Appellant should have filed the first appeal by November 5, 2021. However, as noted above, the Appellant has filed this first appeal on May 10, 2022 i.e. approximately 7 months after the last date permissible under the RTI Act. The claim of the Appellant is that he could not file Appeal due to Covid crisis. I do not find this reason as a cogent one for the delay on the part of the Appellant. Covid crisis could not prevent any person of ordinary prudence to send Appeal by e-mail or filing it through online portal which has now been done by the Appellant after an inordinate delay of 7 months. Even otherwise, the Appellant has chosen to wake up in May 2022 much after the human life came to a new normal after Covid crisis. I, therefore, reject such ground as forwarded by the Appellant.

5. However, I am tempted to examine the information request in the interests of transparency that is the paramount objective of the RTI Act particularly in view of the subject matter involved in the information request. It is pertinent to mention here that the Appellant's "right to information" flows from section 3 of the RTI Act and the said right is subject to the provisions of the Act. Section 2(j) of the RTI Act defines the "right to information" in terms of information accessible under the Act which is held by or is under the control of a public authority. The inclusive list provides for the right to - (i) *inspection of work, documents, records; (ii) taking notes, extracts or certified copies of documents or records; (iii) taking certified samples of material; (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.*

6. 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.*

7. The aforesaid definitions contemplate providing of material in the forms of records, documents, opinions, advices, etc. It does not include giving opinions on issues raised or providing clarifications, confirmations or advice to inquiries. 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."

8. The Appellant has requested for confirmation from the CPIO if same questions are not asked from all aspirants on a day in the Limited Insolvency Examinations (LIE) / Valuation examination. This query of Appellant, in my view, is in nature of inquiries soliciting guidance, advice and opinion and beyond the scope of right to information under the RTI Act. The Respondent is not bound to respond to such inquiries under the RTI Act. In this regard, it is also relevant to refer to the Order dated April 21, 2006, of the Hon'ble CIC in the matter *Dr. D.V. Rao Vs. Shri Yashwant Singh & Anr*, wherein it was observed that: "*the RTI Act does not cast on the public authority any obligation to answer queries in which a petitioner attempts to elicit answers to his questions with prefixes, such as, 'why', 'what', 'when' and 'whether'. The petitioner's right extends only to seeking information as defined in section 2 (f) either by pinpointing the file, document, paper or record, etc., or by mentioning the type of information as may be available with the specified public authority.*" It is also relevant to mention that the Hon'ble Supreme Court of India in its judgment dated August 9, 2011, in the matter of *Central Board of Secondary Education & Anr. Vs. Aditya Bandopadhyay & Ors., inter alia*, held that:
"A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice' in the definition of 'information' in section 2(f) of the Act, only refers to such material available in the records of the public authority..."

9. The Appellant has also requested for copy of decision/regulation permitting asking of different questions to different students. The Respondent has provided a detailed reply by providing the source of power of IBBI to determine the format of the Examinations. He has stated that *“The IBBI conducts Limited Insolvency Examination pursuant to Regulation 3 of the IBBI (Insolvency Professionals) Regulations, 2016. Further, Valuation Examinations are conducted pursuant to Rule 5 of the Companies (Registered Valuers and Valuation) Rules, 2017 and are conducted by the IBBI in the capacity as ‘Authority’ delegated vide Notification No. F. No. 1/27/2013-CL-V(Part-I) dated 23rd October 2017. The said Regulations/Rules empower the IBBI to determine the format of the Examinations....”* The Appellant has not challenged the reply on its merits, rather has reiterated his request in this Appeal. In my view, the Respondent has provided that information which are held or are in control of the IBBI. I, therefore, am not inclined to interference with this decision of the CPIO.

10. The Appellant has further requested for copy of question bank with answers for LIE and Valuation examinations and the total number of questions in the question bank. 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, namely, breach the confidentiality/secrecy 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 / LIE 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.

11. 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."

12. 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."
13. 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.
14. The Appellant has asked when the questions/ answers were updated and modified in view of amendment in syllabus. The Respondent has in his reply *inter-alia* stated that '*the questions asked in the examinations are based on such duly notified syllabus*'. In my opinion, the queries of Appellant in this regard are in nature of inquiries soliciting guidance, advice and opinion and beyond the scope of right to information under the RTI Act. In my view, the Respondent has provided sufficient guidance in response to inquiries of the Appellant though the Respondent is not bound to respond to such inquiries under the RTI Act.

15. 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.