

**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: 21st July, 2022

RTI Appeal Registration No. ISBBI/A/E/22/00027

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 22nd June 2022, challenging the communication of the Respondent dated 15th June 2022 with regard to his RTI Application No. ISBBI/R/E/22/00143 dated 03rd June 2022 filed under the Right to Information Act, 2005 (RTI Act). In the RTI Application, the Appellant has *inter-alia* requested for the following –
“....
 2. *Kindly provide copies of questions asked from me and its answer as grabbed by your system and its correct answers as fed in your system.*
 3. *Kindly also provide reason of asking from me absurd question pointed out by me in my previous RTI dated 27.5.22 again today.*
 4. *Please also let me know the controls, checkings and transparency existing, if any, in the matter of asking questions online. Please provide copies of records of its improvement since 2018.”*
2. Aggrieved by the response of the Respondent, the Appellant has broadly submitted the following: –
 - a. With regard to query (2), (i) not providing questions and answers without authority of law leads to natural assumption of fraud and manipulation, (ii) asking 83 questions out of millions of questions cannot violate integrity of question bank, (iii) forced and self-styled confidentiality and secrecy is impermissible under the RTI Act, (iv) the questions asked mandates cramming on examinees, (v) personal hearing in the matter can only meet the ends of justice.
 - b. With regard to query (3), (i) section 4(1)(d) of the RTI act bounds Respondent to provide reasons mechanically, (ii) the Appellant has sought information as to internal control of IBBI, and (ii) the ‘material in any form’ as sought by Appellant is covered in definition of ‘information’.

- c. With regard to query (4), (i) asking of absurd questions from examines shows complete absence of application of mind, system jugglery, discrimination and partiality, and (ii) section 8(1)(d) is not applicable.
 - d. It is submitted that (i) depriving information to the Appellant will tarnish the image of IBBI, (ii) IBBI is not formed to tarnish the image of various professions, (iii) the information given by Respondent is incorrect, *mala fide*, vague, misleading and bad in law.
3. The Appellant also requested for opportunity of personal hearing. Considering several contentions raised in the Appeal in respect of response on merits and also on Respondent, the Appellant was given opportunity of personal hearing which he availed on 19th July, 2022 through virtual mode. He also requested for copy of comments of the Respondent which was shared with him before the hearing. During hearing, the Appellant made submissions on the lines of written submissions made in Appeal and vehemently argued that Respondent has decided his information request without applying mind and has acted against law and practice relating to RTI Act. The Appellant painstakingly objected to the statements in comments of the Respondent that the Appellant displays an incomplete knowledge of the provisions of the laws and the RTI Act and that the Appellant has been asking for the question/answer data bank to gain an undue advantage. He claimed that he is entitled to know the correct answers to questions asked in examination conducted by IBBI. He was also given liberty to make additional written submissions, if he so chooses, which he declined.
 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 copies of questions asked from him and his answer to the same and correct answers fed in the system. I have already provided detailed reasons to the Appellant vide my Order dated 8th June 2022 in RTI Appeal Registration No. ISBBI/A/E/22/00018 as to how 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. It has been held therein that such information is exempted under section 8(1)(d). Further, the Respondent has requested for reasons behind putting a certain question in the bank. The Respondent is not bound to provide answer to such queries/inquisitions of the Appellant as the same are beyond the scope of ‘information’ and ‘right to information’ under the RTI Act.
8. I further find that the question bank is designed to test the professional capacity and capability of the candidates. It is designed with help of third-party experts and has taken considerably time to prepare them. If they are disclosed the IBBI and other entities engaged in the process will be prejudiced. Further, as the number of questions in the question bank are limited and are repeated in the examinations the IBBI cannot be compelled to disclose the question bank. In this regard, reference may be had to established jurisprudence laid down by the Hon'ble Delhi High Court in Ministry of Railways v. K.G.Arun Kumar, (W. P.(C) No. 2173 of 2013), wherein the Bench observed that:

“The controversy whether an examining body can be asked to disclose the question papers in circumstances, where the number of questions are limited and are repeated, has been considered by this court in National Insurance Co.Ltd v Shri MSF Beig . WP(C) No.27212012 decided on 20.11.2014 and it has been held that in such cases, the examining body cannot be compelled to disclose the question papers.”
9. I also find that the questions are prepared and tests are conducted by persons with whom the IBBI holds a fiduciary duty to ensure that they are not widely published. The information is, thus, exempted under section 8(1)(e) also. In the matter of *Institute of Chartered Accountants of India v. Shaunak H. Satya* (Civil Appeal No. 7571 of 2011) , Hon’ble Supreme Court discussed the contours of the provision under section 8(1)(e) in similar facts and circumstances and held that the information sought were exempted under section 8(1)(e) and that there was no larger public interest requiring denial of statutory exemption regarding such information.
10. The Appellant has also requested for ‘the controls, checkings and transparency existing, if any, in the matter of asking questions online... copies of records of its improvement since 2018’. The Respondent had replied stating that ‘each question paper is unique, derived by the system and hence is randomised and comprehensive in terms of coverage of the syllabus. The disclosure of information online examination system is exempted u/s 8(1)(d) of the RTI Act, 2005.’ The information pertaining to systems placed for examinations conducted by IBBI are exempted under section 8(1)(d) as it includes commercial

confidence and the disclosure of the same could harm the competitive position of a third party which is responsible for conduct of the examinations. Moreover, I am not satisfied that a larger public interest exists for disclosure of such information. I note that on the fact that there is limited number of questions available for tests. It would be difficult for IBBI to publish question bank with limited set questions and ensure selection of candidates based on their analytical and professional ability. Should the question bank be put in public domain would compromise the selection process.

11. In *Sabyasachi Mukherjee Vs CPIO, Tata Institute of Social Sciences* (CIC/MOHRD/C/2020/678733, CIC/MOHRD/A/2020/681154) vide Order dated 3rd January 2022, the Hon'ble CIC held that- *"...I am inclined to accept that since the promotional exam is in a nature of trade test, the questions would be limited. In these circumstances, a disclosure of question papers along with the answer key (model answers) would inevitably place the entire question bank in public domain and thus, effectively reduce the efficacy of the tests. The Commission here also finds it expedient to refer to a decision of the division bench of the Hon'ble Delhi High Court in the matter of All India Institute of Medical Sciences vs. Vikrant Bhuria, (LPA 487/2011) dated 28.05.2012 wherein the issue of disclosure of question papers finding its source from a limited question bank vis-à-vis the right to information was determined in a detailed manner as under:*

"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 Bhupesh Kumar 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)"

12. In view of the above, I do not find any fault with decisions of the Respondent. However, in my view, the comments of learned Respondent, on the knowledge of the Appellant and hypothesising and questioning the intent of the Appellant in seeking the information, are unwarranted and not in consonance with the provisions of the RTI Act. The Respondent is advised accordingly with request to desist from casting such aspersions on the RTI applicants.

13. The Appeal is dismissed accordingly.

Sd/
(Santosh Kumar Shukla)
First Appellate Authority

Copy to:

1. Appellant, CA Rajat Kumar Mehra.
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