60008 (1)

POWER GRID CORPORATION OF INDIA LIMITED
(CORPORATE HR-APP GROUP)
INTER OFFICE MEMO

FROM : DGM (HR)

TO: Smt. Honey M. Mathew
Manager(HR)

REF : C:HR:APP:RTI:2018

DATE : February 13, 2019

Sub: Information sought under RTI Act 2005 by Smt.Anita

We are in receipt of your IOM dated 25.01.2019 regarding RTI appeal by Smt.Anita, D-291, Gokal Puri, Delhi-110 094. Smt. Anita has requested clarification on information provided against Question No.4 in the RTI.

4. पॉवरग्रिड द्वारा अपने कर्मचारियों के लिए अभी तक जिनती बार भी ACGS Scheme निकाली गई है उन सभी के Supervisor to Engineer (Electrical) व Workman to Supervisor (Electrical) बनने के लिए जो question papers कर्मचारियों को दिए गए थे उन सभी question papers की एक-एक प्रति प्रार्थी को उपलब्ध करवाने की कृपा करे ।

Reply: वे हमारे प्रश्न बैंक का एक हिस्सा हैं जिसका उपयोग भविष्य की भर्ती/पदोन्नति प्रक्रियाओं के लिए चयन प्रक्रिया के एक भाग के रूप में किया जा सकता है।

आरटीआई के तहत प्रश्न / प्रश्न पत्र का प्रकटीकरण भविष्य में किसी भी भर्ती/पदोन्नति अभ्यास के लिए सवालों को बेकार कर देगा।

8. (1) notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information

CIC judgment in this regard is enclosed.

This is for your information and action please.

(Arbind Kumar)

(2)

POWER GRID CORPORATION OF INDIA LIMITED
(CORPORATE HR-APP GROUP)
INTER OFFICE MEMO

FROM : DGM (HR)

TO: Smt. Honey M. Mathew
Manager(HR)

REF : C:HR:APP:RTI:2018

DATE : February 11, 2019

Sub: Information sought under RTI Act 2005 by Smt.Anita

We are in receipt of your IOM dated 25.01.2019 regarding RTI appeal by Smt.Anita, D-291, Gokal Puri, Delhi-110 094. Smt. Anita has requested clarification on information provided against Question No.4 in the RTI.

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CIC judgment in this regard is enclosed.

This is for your information and action please.

(Arbind Kumar)

DGM(HR) 11/02

Sr. GM(HR) 11/2

ED(HR) 12/2

(3)

CENTRAL INFORMATION COMMISSION
August Kranti Bhawan, Bhikaji Cama Place,
New Delhi-110066

F. No.**CIC/YA/A/2016/900043**
CIC/YA/A/2016/901595
CIC/YA/A/2016/901597
CIC/YA/A/2016/001630
CIC/YA/A/2016/001680
CIC/YA/A/2016/002455

Date of Hearing	:	**03.02.2017**
Date of Decision	:	**28.02.2017**
Appellant/Complainant	:	**Shri R Seshadri, Delhi**
Respondent	:	**CPIO, Medical Council of India, Delhi** & **CPIO, National Board of Examinations**
Information Commissioner	:	**Shri Yashovardhan Azad**

Since common parties & identical issues are involved in the present appeals, they are being clubbed together for hearing and disposal to avoid multiplicity of the proceedings.

Information sought and background of the case:

Through six different RTI applications, the appellant sought copies of question papers for 'FMGE' along with solutions, frequently referred to as answer key. The applications were initially addressed to CPIO, Medical Council of India and were duly transferred to CPIO, NBE; the latter being custodian of information sought. The CPIO, NBE declined to disclose the information sought seeking exemption under Section 8(1)(d).

Relevant facts emerging during hearing:

Both the parties are present and heard. The appellant is aggrieved by denial of information. It is submitted that the respondent, National Board of Examinations is conducting Foreign Medical Graduate Examination, hereinafter referred to as 'FMGE' for candidates having obtained a bachelors

degree in medicine from foreign countries. Medical Graduates having obtained their qualification from any country except India, USA, Canada, New Zealand are required to clear the 'FMGE' examination as a prerequisite to getting registered as a doctor with any State Medical Council in India. It is the grievance of appellant that the pass percentage in FMGE is very low and question papers alongwith solutions for the FMG examinations conduced in past are not being disclosed by the respondent NBE.

On the other hand, the Ld. Counsel for respondent NBE states that the FMGE is aimed at assessing the depth of knowledge of a candidate & disclosure of questions papers of previous years would diminish the rigour of the examination. It is the contention of the respondent that the questions so asked form part of the intellectual property of NBE. Another contention of the respondent is that the questions designed for the FMGE are limited in number and disclosure of past question papers would be counterproductive. Reliance is also placed on the decision of Hon'ble Delhi High Court in **All India Institute of Medical Sciences Vs. Vikrant Bhuria [MANU/DE/2197/2012].**

Decision:

The Commission shall advert to the contention raised by appellant thereby seeking information in public interest. In **All India Foreign Medical Graduates Association versus National Board of Examination & Ors. [W.P.(C) 6984/2014 & 8559/2014]**, the Delhi High Court decided on a matter in which allegations were made against FMGE regarding alleged lack of transparency. Relevant portion is extracted hereinafter:

> *5. The main grievance of the Petitioner appears to be that the Screening Test conducted by NBE lacks transparency. It is alleged that in the Screening Test, 2014, the result of which was declared on 03.08.2014, only 4.5% of the candidates could get through the Screening Test. According to the Petitioner, the examination pattern was erroneous and the examination was vitiated by various irregularities including that the question paper was not according to the syllabus and the blueprint. The Petitioner therefore prays for providing question papers of Screening Test, 2014 and also to frame Rules to bring in transparency and to harmonize the examination pattern conducted by NBE.*
>
> *6. The NBE filed a counter affidavit in W.P.(C) No.6984/2014 stating that the Screening Test was conducted in accordance with the parameters laid down by the Supreme Court in* ***Sanjeev Gupta v. Union of India,*** *(2005) 1 SCC 45 and the examination pattern*

was also approved by the Ministry of Health & Family Welfare, Union of India as well as the MCI. Denying the allegation that the question paper was not according to the syllabus, it is explained as under:

"H. It is submitted that Foreign Medical Graduate Examination (FMGE) is a proprietory examination of the Answering Respondent. It is submitted that 'proprietory' is the adjectival from corresponding to the noun 'proprietor', which means holding as property. It is submitted that the Answering Respondent has prepared the question bank by paying money to examiners, validators, moderators, assessors and so on and each one of them has accepted the confidentiality clause of NBE. It is submitted that the examiners, validators, moderators, assessors and so on have assigned/given up their respective rights under copyright law in favor of NBE to the maximum possible extent i.e. none of the examiners, validators, moderators, assessors and so on would ever claim any copy right from NBE at any point of time for any question prepared by that person for NBE examination.

I. It is submitted that NBE in the foregoing manner has prepared an invaluable and envious national asset for all times to come. Further, NBE is not commercially exploiting this invaluable national asset but is only using it for the welfare of the nation by testing the minimum standards of medical education. It is submitted that Non-Disclosure Agreement is a step to protect the national asset. It is submitted that Non- Disclosure Agreement does not violate any law nor it is prohibited, further Non-Disclosure Agreement has been stipulated in larger public interest.

J. Because if Non-Disclosure Agreement is set aside, it shall lead to administrative and financial difficulties for the Answering Respondent and in public law in certain situations, when grant of such relief is likely to harm larger public interest, even the doctrine of legitimate expectation and promissory estoppel cannot be allowed to be pressed into service much less a contractual term can be interfered with further the legal maxim: "Salus populi est suprema lex: regard for the public welfare is the highest law." This principle is based on the implied agreement of every member of society that his own individual welfare shall in cases of necessity yield to that of community. His property, liberty and life shall under certain circumstances be placed in jeopardy or even sacrificed for the public good."

7. It is also explained that Foreign Medical Graduate Examination (FMGE) is being conducted by NBE twice a year and the syllabus for the said examination is well defined and strictly in accordance with the Graduate Medical Regulations, 1997. The salient features of FMGE have been explained as under:

"1.1 There is no Negative marking.

1.2 There is no limit to the number of attempts that can be taken by a candidate.

1.3 There is no age bar.

1.4 Total time allocated is 300 minutes. The question paper comprises of two parts of 150 questions each to be attempted by the candidate in a total of 300 minutes i.e. 1 minutes per question.

1.5 As per the screening test Regulations candidate obtaining a minimum of 150 or

more marks out of 300 is declared as Pass in FMGE."

8. It is further explained that proper procedure is being followed for setting the question paper and that the question paper is generated by the computer based on the blueprint command given to it. It is further explained that NBE had merely engaged M/s Prometric as a technology and infrastructure provider to assist NBE.

9. Medical Council of India filed a counter affidavit stating that the Screening Test is being conducted for the past 12 years by NBE which has consistently maintained the standards and that all the allegations made by the Petitioners are untenable and without any basis.

10. During the course of the hearing, it was brought to our notice by the learned counsels appearing for MCI and Union of India that in view of the grievances received from Indian Medical Graduates with foreign qualifications, a Committee had been constituted by the Ministry of Health & Family Welfare to evaluate FMGE question papers of the preceding three years and to look into the grievances of the petitioner Association. We, therefore, directed the Government of India to place before this Court the report of the said Committee.

11. In pursuance thereof, a short affidavit dated 31.05.2016 has been filed on behalf of the Government of India stating that the Committee had submitted its report with the following recommendations:

"(i) The standards of teaching, training and assessment are aimed at ensuring a basic

minimum quality of doctors available to the society. The screening test pathway is primarily assessment (screening test) based licence to practice medicine in the Indian society. The current scheme of screening test has been envisaged in year 2004 and has been executed in a perfect manner by NBE. This review of the nature of questions in the screening test in the current exercise reveals that the questions are of MBBS standards and on the side of being easy at the Graduate MBBS standard.

(ii) The questions are well aligned with syllabus and Indian standards for graduate medical education. The standard of test must ensure supply of safe doctors to the society.

(iii) The faculty members indicated that in order to ensure a well structured screening test, at least 10-15% questions should be of high difficulty and discriminatory level and aimed at higher cognitive level. Distribution of difficulty level of questions:

S.No.	Difficulty Level of Questions	Screening Test 2013-2015	Proposed for future Tests
1	Low	57.78%	60-70%
2	Moderate	42.22%	20-30%
3	High	0	10%

(iv) The existing test blue print provides for a very optimal weightage of all subjects taught in Indian MBBS curriculum, the subjects of Social Preventive Medicines (SPM); Pediatrics and Obstetrics & Gynecology have a weightage of 10%; 5% and 10% respectively i.e. a total of 25%. These three subjects have content areas relevant to Indian context and burden of disease, health programmes and

interventions specific to India and are unlikely to be given the same perspective and weightage in foreign countries. The existing weightage should not be compromised at any stage for these subjects."

12. It is also stated that the said recommendations of the Committee were discussed in the meeting convened by the Ministry of Health & Family Welfare on 27.05.2016 and the recommendations have been accepted in principle. A copy of the report of the Committee dated 18.03.2016 has also been placed before this court.

13. ***In the light of the said report, we do not find substance in the allegations of irregularities in conducting Screening Test, 2014. Hence, the reliefs prayed for in W.P.(C) No.8559/2014 cannot be granted.*** *So far as W.P.(C) No.6984/2014 is concerned, we direct that the recommendations of the Committee dated 18.03.2016 be followed by the Respondents in conducting the Screening Tests so as to ensure transparency in all respects.*

[Emphasis added is ours]

Thus, the Hon'ble High Court found no substance in the allegations of non-transparency. Hence, the argument of appellant seeking disclosure in public interest does not hold either.

Further, this bench has decided identical issue in **Manish Kumar Sharma V/s CPIO, NBE [CIC/YA/A/2014/001131]** and has held that the question papers & corresponding answer keys cannot be divulged upon a purposive interpretation of Section 8 of the RTI Act, 2005. The original decision is in Hindi language & translated version is reproduced hereinafter:

"The respondents have filed detailed submissions thereby highlighting the statement of importance & objects of the FMGE alongwith detailed procedure of selections of questions & solutions and rationale for fixing minimum qualifying criteria. It highlights the emergence & mushrooming

of numerous medical institutions post the division of Union of Soviet Socialist Republics nations. No eligibility criteria is prescribed for admission in these institutes and they operate for commercial gains alone. Students getting less than 50% marks at intermediate level & those who haven't studies life sciences easily secure a place in these medical institutions and as such, the quality of such medical professionals is also dubious. Addressing these concerns, provisions were enacted in the IMC Act, 1956. The respondents have also referred to the decision of Supreme Court in Sanjeev Gupta v. Union of India (2005) to contend that the FMGE has been structured as per the guidelines issued by the Supreme Court.

In light of the facts brought out by the respondent, the Commission accepts the contention that examination under reference falls in the category of Super Speciality and as such, the question papers & model answers thereof cannot be disclosed to the appellant"

[Approved translated text]

A similar question arose in ***Nirav Pradeep Seth versus CPIO, Directorate General of Civil Aviation*** [CIC/YA/A/2014/000111 & 13 others] wherein an individual's right to secure information was pitted against the larger public interest. This bench held as:

After hearing the parties and on perusal of record, the Commission finds that the issue, in the instant case, is not about disclosure of a question paper and its corresponding answer sheet, in general, but whether the corresponding question papers of the Technical General examination conducted by DGCA, can be disclosed to the appellant. The said examination is conducted to test the professional proficiency of the prospective pilots, who while flying an aircraft, are responsible for the life and physical safety of the general public. The issue, therefore, to be adjudicated by the Commission is whether this information sought can be provided, under the Act, as the general public while flying in an aircraft, relies on the professional competency of a Pilot and an Aircraft Maintenance Licensed Engineer, who certify the airworthiness of the aircraft before flying and are responsible for ferrying the passengers safely to their destinations.

The appellant, while quoting the Supreme Court's decision in ***ICAI v. Shaunak H. Satya****, has urged that the question papers have to be disclosed and that the Supreme Court's decision cannot be circumvented.*

The Commission takes note of the Delhi High Court's decision in ***AIIMS V. Vikrant Bhuria [LPA 487/2011]****. The Court while minutely observing the judgement of the Apex Court in* ***Shaunak H. Satya*** *(supra) observed,*

> *"14. We tend to agree with the counsel for the appellant that the judgment of the Apex Court in* ***Shaunak H. Satya*** *(supra) cannot be blindly applied to the facts of the present case. The judgment of the Apex Court was in the backdrop of the question papers in that case being available to the examinees during the examination and being also sold together with suggested answers after the examination. Per contra in the present case, the question papers comprises only of multiple choice questions and are such which cannot be carried out from the examination hall by the examinees and in which examination there is an express prohibition against copying or carrying out of the question papers. Thus the reasoning given by the Supreme Court does not apply to the facts of the present case.*
>
> *15. We are satisfied that the nature of the examination, subject matter of this appeal, is materially different from the examination considered by the Supreme Court in the judgment supra. ...*
>
> *16. The Sub-Dean of Examinations of the appellant in the Memorandum of this appeal has further pleaded that 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 Bhupeshkumar 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 is ours)

The Commission, after hearing the averments made by both the parties, concurs with the view of the respondents that the technical general examination, being a professional examination, the basis on which pilots are evaluated by a team of experts and then selected as pilots/crew members, is a highly specialized discipline. These pilots are responsible for the life and physical safety of the general public, who is relying on the professional competency of the Pilot, while flying. The respondent authority has to maintain a proper balance between the appellant's demand for question papers for the technical general examination and the safety of thousands of passengers relying on the professional proficiency of the aircraft pilots.

It has been argued that disclosure of these question papers would jeopardize the basic selection process as it would be easy for commercial organizations to disseminate questions and answers to make it easier for candidates to qualify without having acquired requisite skills and knowledge. The Commission concurs with the Delhi High Court's decision in ***AIIMS V. Vikrant Bhuria*** *that knowledge of these question papers of previous sessions/years with correct answers may lead to selection of a candidate with good memory rather than an analytical mind. The conduct of selection process including examinations in such specialized areas as recruitment of pilots and crew operators is to be handled with utmost care and responsibility, in order to promote and maintain the highest level of safety and quality in*

civil aviation and above all, the larger public interest. The Commission, having perused the Supreme Court's decision in ***Shaunak H. Satya,*** *quoted by the appellant and the decisions of the Commission, cited by the respondent, is of the view that disclosure of information sought by the appellant will not only seriously compromise the quality of the examination process but would endanger the safety of the public. In this case, the experts, i.e. the respondent authority itself, has opined that the information sought cannot be provided as it is a highly specialised and professional examination, which is disclosed nowhere in the world.*

In view of the above, the Commission concludes that there is no public interest in divulging the question papers sought by the appellant for the Technical General Exam, for 14 different sessions of examination held, since 2009 till date.

The ratio propounded in ***Nirav Pradeep Seth (supra)*** squarely covers the controversy involved in the present appeals. For all practical purposes of public interest & well being of the society at large, the case of medical doctors is akin to that of the pilots. Both professions require highest degree of precision and professional competence. Disclosure of any information which diminishes the rigour of the FMGE shall necessarily impact adversely the quality of doctors practising in the nation. Acceding to the right of the appellant & all similarly situated persons to secure information sought would prejudice the larger public interest. It is a settled position of law that the individual rights can be derogated when they tend to eclipse a larger collective right of the society.

To sum up, it is clearly established that the screening test i.e. FMGE has been validated by the Supreme Court in ***Sanjeev Gupta vs. Union of India, 2004.*** Further, the credentials of the NBE responsible for taking this exam have also been bolstered by the Delhi High Court in ***All India Foreign Medical Graduates Association vs National Board of Examination and others (WP (C) 6984/2014 and 8559/2014).*** The Hon'ble High Court had found no substance in the allegations made of non-transparency against the NBE and hence, the appellant call for disclosure of exam papers in public interest was rejected.

In the clutch of RTI second appeals it has been argued by the appellant that since the past percentage is very low, the system is unfair to the student. Further, the appellant claims that the students who are appearing now in the FMGE are graduates of well run and equipped medical colleges in China

and other places and therefore, to give level playing field they should be allowed to have a copy of the question papers. The Commission, however, is in full agreement with the NBE's averment in a series of cases on the issue that the guidelines on the parameters of this exam were laid down by the Hon'ble Supreme Court itself, which are being followed assiduously. 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.

The Commission is of the opinion that registration of a doctor with any State Medical Council has an impact on public health and hence should be only after proper screening. In the case of doctors acquiring a foreign medical degree, it is of critical importance that they go through the screening test to meet the exacting standards before getting registered as doctors. 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.

I am left with no doubt to conclude that disclosure sought in the present batch of appeals is not in line with the object of the RTI Act, 2005 which aims at 'setting out a practice regime of right to information'. As a sequel to the aforesaid, the disclosure of information sought cannot be made. Accordingly the present appeals are dismissed.

(Yashovardhan Azad)
Information Commissioner

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges prescribed under the Act to the CPIO of this Commission.

(R.P.Grover)
Designated Officer

Copy to:-