THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 20.11.2014

+ W.P.(C) 272/2012 & CM No. 561/2012

NATIONAL INSURANCE CO. LTD ..... Petitioner

versus

SHRI MSH BEIG ..... Respondent

AND

+ W.P.(C) 332/2012 & CM No.720/2012

ORIENTAL INSURANCE CO. LTD ..... Petitioner

versus

SHRI MSH BEIG ..... Respondent

Advocates who appeared in this case:

For the Petitioners : Mr R.S. Mathur, Mr Dinesh Mathur & Ms Jyoti Daxtidar.

For the Respondent : None.

CORAM:-
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioners are insurance companies and impugn an order dated 16.08.2011 passed by the Central Information Commission (hereafter 'CIC') directing the Life Insurance Company as well as all four general insurance companies to disclose information in response to RTI

applications as per the principles settled by the Supreme Court in ***CBSE v. Aditya Bandopadhyay*: (2011) 8 SCC 497**.

2. The principal grievance of the petitioners is that the impugned order directs disclosure of certain information which is not covered by the decision of the Supreme Court in ***Aditya Bandopadhyay*** *(supra)*. The controversy involved in these petitions relate to disclosure of information with respect to promotional exams conducted by National Insurance Academy (hereafter 'NIA') at Pune.

3. Briefly stated, the facts necessary to address the controversy are as under:-

3.1 The respondent is an employee of National Insurance Co. Ltd. (the petitioner in W.P.(C) 272/2012 and hereafter referred to as 'NIC') and had taken an examination conducted by NIA for promotion from scale-I to scale-II in 2010 and was not declared as a successful candidate. According to the respondent, he had fared well in his examination and should have scored more than 90%.

3.2 In the circumstances, the respondent filed an application under Right to Information Act, 2005 (hereafter the 'Act') before the Central Public Information Officer of NIC. (hereafter 'CPIO') and sought the following information in respect of test taken by him:-

> "1. Copy of answer sheet,
> 2. Copy of Question papers,
> 3. Copy of answer key to the questions,
> 4. Copy of marks assessment sheet."

3.3 The aforesaid request for information was denied by the CPIO by its letter dated 04.08.2010, *inter alia,* on the ground that the information sought by the respondent was exempt from disclosure by virtue of Section 8(1)(e) of the Act. Aggrieved by this response, the respondent preferred an appeal before the First Appellate Authority which was rejected by an order dated 20.09.2010.

3.4 The respondent appealed against the decision of the Appellate Authority before the CIC. Following the decision of the Supreme Court in ***Aditya Bandopadhyay*** *(supra),* the CIC allowed the respondent's appeal and directed NIC to provide a copy of the answer sheet or provide an inspection of the answer sheet to the respondent. In addition, the CIC also directed NIC to provide the respondent with the question papers along with answer key to the questions (model answers).

3.5 Aggrieved by the said order, NIC had preferred the present petition (being W.P.(C) 272/2012). Oriental Insurance Company (hereafter 'OIC') also challenges the impugned order as CIC had further issued omnibus directions in the following words:-

> "9. Through this order all CPIOs and First Appellate Authorities of LIC and all 4 GICs are directed to disclose information in response to RTI applications received by them as per the principles amplified in the order of the Supreme Court of India referred to above."

4. It is stated by the petitioners that the four general insurance companies including the petitioners through a common platform i.e. General Insurance Public Sector Association of India (hereafter 'GIPSA'),

devised a Promotion Policy for their officers in 2006, which was approved by the respective Board of Directors of the said insurance companies. The said policy (Promotion Policy for Officers – 2006) laid down a criteria for promotions from various scales to the next scale. In terms of the said policy all officers falling within the zone of considerations for promotions are required to qualify a written test by an independent professional examining body (in this case the NIA). NIA has been entrusted with conducting test for promotions of officers in various scales since 2007. It is stated that the promotional exam conducted by NIA is a trade test and the questions are, essentially, practice oriented. Further the number of questions are limited and are not in public domain.

5. It was stated by the petitioners that NIA has prepared a question bank keeping in view the requirement of the insurance companies and the same is updated after every three years in light of the developments in the industry.

6. Insofar as disclosure of the answer sheets is concerned, this Court by an order dated 17.01.2012 had held that the issue was covered by decision of the Supreme Court in ***Aditya Bandopadhyay*** *(supra)* and accordingly notice was issued only on the limited question of whether the question paper and model answers were exempt from disclosure under the Act. It is also relevant to note that, CIC had by an order dated 06.09.2011 directed OIC to provide answer sheets of the promotional exam to one Smt. Tanmayee Ranjan. This order of CIC was impugned by OIC by way of a petition (being W.P.(C) No. 1917/2011) to this Court. The said petition

was disposed of by this Court by an order dated 23.03.2012 directing disclosure of the answer sheets.

7. The exam conducted by NIA is essentially an exam for evaluating the candidates for promotion and to test their proficiency of the knowledge of the industry and the work involved.

8. 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.

9. The controversy whether question papers are required to be disclosed in cases where there are limited questions from a question bank was examined by a Division Bench of this Court in the context of questions relating to a Super Speciality Entrance Exam conducted by the All India Institute of Medical Sciences, in ***All India Institute of Medical Sciences vs. Vikrant Bhuria***: **LPA 487/2011,** decided on 28.05.2012. The Division Bench referred to various decisions of the Supreme Court and held that:

> "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."

10. Following the aforesaid decision, a Single Judge of this Court in ***All India Institute of Medical Sciences vs. Prakash Singh***: **W.P.(C) 8916/2011,** decided on 06.12.2012, set aside the decision of CIC to disclose the question papers and answer keys pertaining to the MBBS Entrance Examination. The relevant extract of the said decision is quoted below:-

> "I am of the view that while, undoubtedly, the examination qua which information was being sought in All India Institute of Medical Sciences v. Vikrant Bhuria case pertains to a super specialty course, where seats were limited, that by itself did not form the basis of the conclusion reached by the Division Bench. The view taken by the Division Bench is based on the fact 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.
>
> The Division Bench has also observed that 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.
>
> Having regard to the judgment of the Division Bench, the order of the CIC assailed in the writ petition, cannot be sustained. Accordingly, the writ petition is allowed and the judgment of the CIC dated 13th December, 2011 is set aside."

11. In my view, the aforesaid decision would squarely apply in the facts of the present case as the number of questions are limited and a disclosure

of the same would affect the efficacy of the promotional exams conducted by the NIA. In this view, the impugned order passed by CIC insofar as it directs disclosure of question paper and answer key (model answers) is set aside.

12. The writ petitions are allowed to the aforesaid extent. The applications also stand disposed of. The parties are left to bear their own costs.

VIBHU BAKHRU, J

NOVEMBER 20, 2014
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HIGH COURT OF DELHI
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