

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 7th May, 2015

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LPA No.543/2014 & CM No.13601/2014 (for stay).

MASTER RAJAT MANN

..... Appellant

Through: Dr. Jeet Singh Mann, father of the
appellant.

Versus

**GURU GOBIND SINGH INDRAPRASTHA
UNIVERSITY & ORS.**

..... Respondents

Through: Mr. Vaibhav Kalra, Adv.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This intra-court appeal impugns the order dated 6th August, 2014 of the learned Single Judge of this Court of dismissal of W.P.(C) No.4940/2014 preferred by the appellant.

2. The appellant had appeared in the Common Entrance Test held by the respondent no.1 University for admission of its MBBS course to the year 2014-15 and after successfully qualifying Stage-I of the examination, appeared in Stage-II and was ranked at No.3631 with 75 out of 150 marks in Botany and 63 out of 150 marks in the subject of Zoology. Being not satisfied with the marks awarded to him in the said two subjects, he applied under the Right to

Information Act, 2005 (RTI Act) for the copies of the Optical Mark Reader (OMR) answer sheets, question paper and answer keys. (We may record that the respondent no.1 University has a practice of taking back the question papers from the examinees before they leave the examination hall). The respondent no.1 University however in response allowed only inspection of the OMR answer sheet and did not provide to the appellant the question paper or the answer key stating that there was no provision therefor. Aggrieved therefrom, the writ petition from which this appeal arises was filed impugning the regulations of the respondent no.1 University permitting only inspection of answer sheets and prohibiting the supply of question papers and answer keys.

3. The said writ petition was dismissed by the learned Single Judge in *limine* holding that the remedy if any of the appellant was before the Central Information Commission (CIC) and not by filing the writ petition.

4. This appeal came up before us first on 22nd August, 2014 when being of the view that the dismissal by the learned Single Judge of the writ petition on the ground of the remedy of the appellant being before the CIC and not by way of a writ petition was erroneous since the appellant had in the writ petition challenged the *vires* of the regulations of the respondent permitting only inspection of the answer sheets and prohibiting furnishing of question papers

and answer keys, the appeal was entertained. The counsel for the respondent no.1 University appearing on advance notice on that date however stated that the appellant had since been furnished a copy of the answer sheet; he however could not give any specific reason as to why the question papers and answer keys sought by the appellant could not be furnished. It was further felt by us on that date that providing the answer sheets alone, without furnishing the question paper and the answer key, serves no purpose.

5. The respondent no.1 University has filed a reply *inter alia* stating:-

- (i) that the appellant has already been provided the copy of his OMR answer sheets and has also been shown the answer keys during inspection to enable him to verify the correct answers and calculate the final score – thus the purpose for which the appellant had approached the respondent no.1 University has been duly met;
- (ii) that the respondent no.1 University's policy decision for not providing the question paper is not under challenge and thus the appellant is not entitled to raise grievance in that respect;
- (iii) that the respondent no.1 University in the brochure, published of admission process itself had provided that the examinees will have

to handover their OMR answer sheet along with the question paper before leaving the examination hall; thus the appellant was well aware about the practice and rule of the respondent no.1 University;

- (iv) that as per the admission brochure, the examinees were not even allowed to note down the questions from the question paper;
- (v) that the respondent no.1 University has been following the practice/policy of not handing over/providing the question papers since the very beginning, with an objective to ensure that the pattern, style and type of questions which are limited are not known to the aspiring future candidates prior to the examination – this is done to streamline the selection process so as to give admission to the more meritorious students;
- (vi) the said practice of not allowing the examinees to carry the question booklet post examination is a uniform policy adopted by the respondent no.1 University with respect to all programmes/courses in which it conducts entrance examinations; the rationale behind adopting the said policy is to evaluate the

examinees on the basis of their conceptual and analytical ability and to distinguish them from those examinees who have exceptionally good memory and can answer the questions on the basis of their memory rather than applying their minds in the true sense;

(vii) this Court ought not to interfere with the said decision of the University in the academic matters and selection process; reliance in this regard is placed on *All India Council for Technical Education Vs. Surinder Kumar Dhawan* (2009) 11 SCC 726, *Director of Film Festivals Vs. Gaurav Ashwin Jain* (2007) 4 SCC 737 and on *Sanchit Bansal Vs. Joint Admission Board* (2012) 1 SCC 157;

(viii) this Court also in judgment dated 28th May, 2012 in LPA No.487/2011 titled *All India Institute of Medical Sciences Vs. Vikrant Bhuria* upheld the contention of AIIMS that in case the question papers are released, the same will lead to a situation where the students with good memory and who can memorize the previous years' questions will be selected rather than the one with an analytical mind since the number of questions are limited and

the same will frustrate the whole purpose of selecting the meritorious candidates;

- (ix) the respondent no.1 University is also exempted from releasing the question papers to the students in terms of Section 8(1)(j) of the RTI Act as the disclosure of information would prejudice the admission process of the University;
- (x) the examinees are already aware of the questions and are now being provided with the copy of the answer keys as well as the answer sheets to evaluate their marks at the time of inspection; no purpose would be served by providing them with a copy of the question paper after the examination is over; and,
- (xi) if the question papers are also released, the same will be utilized by the coaching institutes and other private bodies who will sell the same for earning profit at the cost of those paper setters who use their intellect pool to set the question paper and further share the same with the University, causing great prejudice.

6. Though the appellant has filed a rejoinder but need is not felt to refer thereto. We heard the father of the appellant and Mr. Vaibhav Kalra, Advocate appearing for the respondent no.1 University.

7. The father of the appellant relied on:-

- (a) judgment dated 13th July, 2012 of the Division Bench of this Court in LPA No.229/2011 titled ***Union Public Service Commission Vs. Angesh Kumar*** holding that there can be no secrecy or confidentiality about the raw marks and the method of scaling/actualization adopted by an examiner and that the objective of RTI Act is transparency and accountability. It was further held that examinee is entitled to satisfy himself/herself as to the fairness and transparency of the examination and the selection procedure and to maintain such fairness and transparency, disclosure of raw marks, cut off marks and scaling method adopted is a must;
- (b) judgment dated 2nd September, 2013 of Single Judge of this Court in W.P.(C) No.4953/2013 titled ***Raj Kumar Jha Vs. University of Delhi***, on a conspectus several dicta of the Supreme Court holding, that it would be unfair to penalize the students for not giving an

answer which accords with the key answer when the key answer is demonstrated to be wrong and that the student community could not be made to suffer on account of errors committed by the University;

- (c) ***Alka Matoria Vs. Maharaja Ganga Singh University*** AIR 2013 Raj. 126 (DB), following the dicta of the Supreme Court holding that the provisions of the RTI Act will prevail over the provisions of the bye-laws/rules of examining bodies and that unless the examining body was able to demonstrate that answer book fell under the exempted category of information within the meaning of Section 8(1)(e) of the RTI Act, the examining body will be bound to provide access to an examinee to inspect and take copies of his evaluated answer book;
- (d) ***Union of India Vs. Anita Singh*** AIR 2014 Delhi 23 holding that the expression “personal information” in Section 8(1)(j) of the Act refers to the information personal to a third party held by the public authority and not information relating to the information seeker himself or the public authority;

- (e) ***The Institute of Chartered Accountants of India Vs. Shaunak H. Satya*** (2011) 8 SCC 781 laying down that though the question papers, solutions/model answers and instructions in regard to any particular examination may not be disclosable before the examination is held but the position will be different once the examination is held in as much as the disclosure of question papers, model answers and instructions in regard to any particular examination would not harm the competitive position of any third party once the examination is held. It was further held that examining body should change their old mindsets and tune them to a new regime of disclosure of maximum information; and,
- (f) ***Central Board of Secondary Education Vs. Aditya Bandopadhyay*** (2011) 8 SCC 497 laying down that the provisions of the RTI Act will prevail over the provisions of the bye-laws/rules of the examining bodies in regard to examinations and unless the examining body is able to demonstrate that the answer books fall under any of the exempted categories of information described in Clauses (a) to (j) of Section 8(1) of the RTI Act, the examining body will be bound to provide access to an examinee to

inspect and take copies of his evaluated answer books, even if such inspection or taking copies is barred under the rules/bye-laws of the examining body governing the examinations.

8. Per contra Mr. Vaibhav Kalra, Advocate for the respondent no.1 University argued:-

- (i) that the respondent no.1 University has now started giving inspection of the OMR answer sheets and the answer key;
- (ii) that the entrance examination comprises of multiple choice questions of which there is not much choice and which are limited in number;
- (iii) that if the examinees are allowed to carry away the question papers from the examination hall, the said question papers would be published and the aspirants for the next year's examination would be in the know thereof;
- (iv) that the questions in the next year's entrance examination are likely to be the same, thereby reducing the efficacy of the examination; and,

(v) if not so, the questions will exhaust themselves over a period of two/three years and once the question papers of two/three years are published, the questions in the future examination would be out of those only and which would be to the knowledge of the students taking examinations thereafter. Reliance was placed on *Nirav Deepak Jobanputra Vs. State of Maharashtra* MANU/MH/0510/2002 where the refusal to supply question paper on the ground of secrecy was upheld observing that the students do not have a right to demand the question paper and they do not have right to be part of the evaluation systems of their performance or to verify the correctness of the evaluation made by the examiners and certain amount of secrecy and confidentiality will have to be maintained, particularly considering that almost 83000 students were appearing annually in that examination and on *Vikrant Bhuria* aforesaid.

9. The question for adjudication boils down to, (i) validity of the rule of the respondent no.1 University of not allowing the students to take away the question paper from the examination hall; (ii) validity of the refusal of the respondent no.1 University to supply copy of the said question paper under the

RTI Act even after the result of the examination has been declared; and, (iii) validity of the refusal of the respondent no.1 University to supply copies of the OMR answer sheets and answer key under the RTI Act even after the result of the examination has been declared, though permitting inspection thereof.

10. We have considered the rival contentions.

11. As far as the reliance by the counsel for the respondent no.1 University on the judgment of the Division Bench of the Bombay High Court in *Nirav Deepak Jobanputra* supra is concerned, the same relates to the pre RTI era and is clearly not in sync with the subsequent judgments cited by the father of the appellant. Reliance thereon is thus misconceived.

12. As far as rule/policy of the respondent no.1 University of not allowing the examinees to take away the question papers from the examination hall is concerned, the Supreme Court in *Shaunak H. Satya* supra has held that question papers may not be disclosable before the examination is held but the position will be different once the examination has been held. However the contention of the respondent no.1 University is that the question papers are not disclosable at all, not even after the result of the examination has been declared. The reason given therefor is of the number of multiple choice questions which

can be asked being limited and exhausting themselves if not in one year, in two or three years and the necessity of repeating the said questions and the disclosure and publication thereof prejudicing the following years' examination. It is thus not a question of the question papers being not disclosable till the declaration of the result of the examination only.

13. Such a reason undoubtedly prevailed with the Division Bench of this Court in *Vikrant Bhuria* aforesaid where also the plea of AIIMS was that knowledge of 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 and that setting up of such question papers besides intellectual efforts also entailed expenditure and the possibility of AIIMS, in a given year cutting the said expenditure by picking up questions from its question bank. However what distinguishes the present situation from *Vikrant Bhuria* is that Vikrant Bhuria who had sought information was not the examinee himself and the possibility of his acting at the instance of a coaching institution or a publisher and acting with the motive of making commercial gain from the information could not be ruled out. Also, the examination with which Vikrant Bhuria was concerned, was to a super specialty course in medicine and with respect whereto it was pleaded that the questions available were limited.

14. On the contrary here we are concerned with the examinee himself and examination to the admission to the MBBS course. The candidates appearing for the MBBS entrance examination are students who have appeared in or have passed the Class XIIth examination held by the CBSE or other boards of examination. It can safely be argued that they cannot be tested beyond the curriculum prescribed for Class XIIth. To our knowledge, no secrecy is maintained with respect to Class XIIth board examination question papers which the examinees are allowed to carry away with them after the examination. Of course Class XIIth board examination does not comprise only of multiple choice questions and also comprises of subjective questions. However we have wondered that when there is no such fear as is expressed with respect to the Class XIIth board examination and when question papers therefor can be set year after year, why the same cannot be done for the MBBS entrance examination. The course content for the MBBS entrance examination and the possible questions even if of multiple choice variety cannot fall in a narrow domain, as in an examination for a super specialty course in medicine. No explanation in this regard has been given in the counter affidavit of the respondent no.1 University or was given at the time of hearing. We do not even know whether the matter has been considered by the experts of the respondent

no.1 University in this light. We find it very hard to believe that the stock of questions even of multiple choice for testing the merit for admission to MBBS is limited. The same does not speak very well of the innovative powers of the setters of the said question papers.

15. We find the fear expressed to be not a considered decision for another reason. Though the University may prohibit its question papers setters of the said examination from publishing the same but cannot possibly prohibit the other teachers of the subjects in which the examination is held from, of their own acumen and intellect, frame and publish the model question papers. We do not think that the respondent no.1 University can prohibit its question papers setters also from beside setting the question papers, framing and publishing model question papers. If it is to be believed that stock of multiple choice of question is limited, then it will follow that the model question papers set up by other teachers/professors would also be the same as set by the question paper setter. If it were to be so, the questions which the respondent no.1 University is seeking to keep secret would no longer remain secret.

16. In today's day and time we have model question papers for nearly each and every examination and though we were not addressed on this part but are sure there must be for the subject examination also. Not only so there are

specialized coaching classes for each and every entrance examination with some of them having a very good success rate. Such coaching classes would certainly be coaching on the likely multiple choice questions in the entrance exam.

17. All this throws a lot of dust on the plea of secrecy taken by the respondent no.1 University.

18. As far as we are aware, there is no such restriction in the examinations held for entrance to the engineering colleges. We have also wondered that when the question paper setters of the said examination can year after year come up with new and different multiple choice questions to test the skill and merit of the examinees, what is the difference in the medical entrance examination.

19. We had during the hearing enquired from the counsel for the respondent No.1 University whether the Delhi University, also conducting the MBBS course, is also following the same policy. No answer was forthcoming. Similarly the position prevalent in other Universities also could not be stated / informed.

20. The father of the appellant during the hearing handed over to us the question papers of All India Pre-Medical Test held for admission to MBBS and

also comprising of multiple choice questions and the question paper of IIT JEE (Main) and IIT JEE (Advanced) again comprising of multiple choice questions as well as the Notification of the CBSE about the display of images of OMR answer sheets on the website.

21. We are of the opinion that if the other Universities also holding entrance examination to the MBBS course comprising of multiple choice questions are not preventing their students from carrying away the question papers from the examination hall or are providing copies of the answer key and the answer sheets then there is no reason for the respondent no.1 University to take a different stand, particularly when no reason therefor is given. The very fact that different Universities holding separate examination to entrance to their MBBS course are able to come up with different question papers year after year belies the contention of the respondent no.1 University of the stock of questions being limited. We may also take note of the fact that most of the students appearing for the entrance examination to the MBBS course in the respondent no.1 University would also be appearing in the entrance examination held by Delhi University as well as by other Universities outside Delhi and which examinations would be held on different dates, some before the entrance examination of the respondent no.1 University and some after. If the choice of

questions is limited, we fail to see as to how secrecy can be maintained after other Universities have held their examinations.

22. It appears to be a case of the respondent no.1 University having not changed its mindset and kept it in tune with the new regime under the RTI Act.

23. We ourselves are not experts in the matters with respect to which we have raised our doubts aforesaid. The only purport thereof is to make the respondent no.1 University think anew and from all perspectives. The respondent no.1 University, in our view, by taking a plea of the stock of multiple choice questions being limited is affronting the innovativeness and intellect of its question paper setters.

24. What we have observed hereinabove applies equally to the refusal of the respondent no.1 University to give copies of the OMR answer sheets of the examination and the answer key though giving inspection thereof, in as much as the reason for not supplying copies of answer sheets and answer key is the same i.e. to not thereby make the question paper public.

25. We may add, giving inspection of a document is not the same as furnishing a copy thereof. Though the RTI Act in Section 2(j), while defining “right to information” includes besides taking copies, also a right to inspect but

Section 6(1) requires a person seeking information to specify the information sought and Section 7(9) requires the information sought to be “ordinarily provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.” It thus follows that if the information seeker, in exercise of right of information, has sought information by furnishing copies of information, the Act mandates (Section 7(9) uses the word “shall”) furnishing of information in the form of copy of the information / document and the public authority cannot say that it will furnish such information by offering inspection thereof. The only grounds on which the public authority can say so is, either where supply of information by furnishing copies would entail diversion of resources or where furnishing of copies would be detrimental to the safety or preservation of the information / document. The respondent No.1 University has refused to supply copies of OMR answer sheets of the appellant himself and the answer key, not on the grounds of the same entailing diversion of resources but on the ground of the same in turn revealing the contents of the question paper. The same cannot be a ground of preservation of the OMR answer sheet or answer key. It can perhaps fall under the ground of “safety” but with which we have dealt above.

26. Under the RTI Act no information sought can be refused unless the same falls in one of the Clauses of Section 8(1) thereof. The respondent no.1 University has pegged its case under Clause (j) of sub Section (1) of Section 8 which exempts from disclosure of information which relates to personal information and 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. In our opinion the issue whether the question papers/ answer sheets/answer keys fall in the said exemption is no longer *res integra* in terms of the judgments in ***Shaunak H. Satya*** (supra) holding that furnishing of information by an examining body, in response to a query under the RTI Act may not be termed as an infringement of copyright. Though this Court in ***Vikrant Bhuria*** distinguished ***Shaunak H. Satya***, but in the facts of that case, as noticed above and which are not applicable to the present case.

27. However the matter being academic in nature and with respect whereto the settled principle of law is that the decision should be left to the experts in the field of education, we, instead of quashing the aforesaid rules/policies of the respondent no.1 University, deem it appropriate to direct the respondent no.1 University to take a decision on all the said aspects, in the light of observations herein, within a period of three months herefrom.

28. The father of the appellant had informed us that the appellant as per his rank was admitted to B.Sc. Medical Sciences course. He argued that if the appellant, on the question paper being made available and comparing it with his OMR answer sheets and the answer key finds any error resulting in improving his rank, may get admission in some better course. He however did not state that in the inspection taken by him of the appellant's OMR answer sheet and answer key any error was found. In the circumstances, we are of the view that no other relief personal to the petitioner can be granted in the present case.

29. We accordingly, allow this appeal in terms of above by directing the respondent No.1 University to review its policy / rules / regulations qua question papers, answer key and OMR answer sheets of the student concerned, especially in the light of our observations in this judgment and to take a decision vis-à-vis the furnishing of copies of question papers, answer key and OMR answer sheet, of the MBBS entrance examination, of the information seeker under the RTI Act, within a period of three months herefrom.

No costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

MAY 7, 2015/‘pp’