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

+ **W.P.(C) 7288/2018 & CM 27810/2018**

ALL INDIA INSTITUTE OF MEDICAL
SCIENCES

..... Petitioner

Through: Mr Aldanish Rein, Advocate.

versus

JAI PRAKASH

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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17.07.2018

1. The petitioner has filed the present petition under Article 226 of the Constitution of India, impugning the order dated 01.05.2015 (hereafter 'the impugned order') passed by the Central Information Commission (CIC) in a second appeal preferred by the respondent under Section 19(3) of the Right to Information Act, 2005 (hereafter 'the Act').
2. By the impugned order, the CIC has, *inter alia*, directed disclosure of the information as sought by the respondent including marks statement of all the selected candidates, question booklet with relevant answer key along with OMR answer sheet and the criteria laid down for allocation of the marks for the examination conducted for the post of Lab Technician.
3. Briefly stated, the relevant facts necessary to address the controversy

are as under:-

3.1 On 13.09.2014, the respondent filed an application to the petitioner seeking marks statement of all the selected candidates, certified copies of question booklet, OMR sheet, answer key along with criteria laid down by the interview panel for marks distribution for the exam conducted for the post of Lab Technician.

3.2 On 22.09.2014, the Public Information Officer (PIO) of the petitioner responded to the respondent's application rejecting the information sought by the respondent as according to the petitioner the same was not in the larger public interest. The relevant extract of the response of the PIO of the petitioner to the respondent's application is set out below:-

“

S.No.	Questions	Answers
1.	Please provide me the marks statement of all the selected candidates in written examination as well as in interviews category wise.	The details of marks is available on AIIMS website www.aiimsexams.org by entering application number & date of birth certificate.
2.	Provide me a copy of Question Booklet, My OMR Answer Sheet and the answer key used by the cell to evaluate the Answer sheet of the candidates each.	The question papers and answer key of entrance examination cannot be provided, as these consist of question bank and is being used for online examination and the supply of the same would be against larger public interest. The

		Hon'ble Delhi High Court has also passed an order dated 28.05.2012 in the LPA No. 487/2011 filed by AIIMS in a similar matter.
3.	I also want to know the criteria used by the interview panel for the marks distribution in interviews.	The criteria of marks depends on the performance of the candidate in the interviews.

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3.3 Aggrieved by the same, the respondent preferred an appeal on 29.10.2014 under Section 19 of the Act before the First Appellate Authority (hereafter 'FAA'), which was also rejected by an order dated 29.11.2014.

3.4 This led the petitioner to file a second appeal under Section 19(3) of the Act before the CIC. The said appeal was allowed by the impugned order.

4. The petitioner has assailed the impugned order on the ground that it is contrary to the decision of the Division Bench of this Court in *All India of Medical Sciences v. Vikram Bhuria: LPA 487/2011, decided on 28.05.2012*. The petitioner contends that the CIC had erred in holding that the said decision is an exception and applies only to Super Speciality courses.

5. In the case of *Institute of Chartered Accountants of India v. Shaunak H. Satya & Ors: (2011) 8 SCC 781*, the Supreme Court had observed that the question papers relating to the examinations conducted by the Institute of Chartered Accountants of India are disclosed to everyone at

the time of the examination and “*Section 8(1)(d) of the RTI Act does not bar or prohibit the disclosure of question papers, model answers (solutions to question) and instructions, if any, given to the examiners after the examination and after evaluation of answer scripts is completed*”.

6. In the case of ***All India Institute of Medical Sciences v. Vikram Bhuria*** (*supra*), the Division Bench of this Court considered the applicability of the above decision in respect of the question papers and answers pertaining to the entrance examination conducted for the MCH super-speciality entrance exam conducted by AIIMS. In that case, the respondent therein had sought the following information:-

“2. The respondent in his application dated 5th Aril, 2010 had sought the following information from the Information Officer of the appellant.

- “1. Certified copies of original questions papers of all Mch super-speciality entrance exam conducted from 2005-2010.
2. Certified copies of correct answers of all respective questions asked in Mch super-speciality entrance exam conducted from 2005-2010.”

7. In *Vikrant Bhuria*’s case, this Court accepted the contention of AIIMS that the information as sought for could not be provided as the examination in question was for entrance to one of the super-speciality courses where the questions in the question bank were limited. In that case it was, *inter alia*, urged on behalf of AIIMS “*that at the level of super-speciality examinations, there can be very limited questions, which are developed gradually*”. AIIMS had contended that the disclosure of such questions

would only encourage students appearing for the exam to simply memorize the answers for the exam and thereby adversely affect the selection of good candidates for super-speciality courses; thus, question papers of entrance examination for super-speciality courses could not be made public.

8. In view of the aforesaid contentions, the Division Bench of this Court held that subject matter of appeal in that case was materially different from the examination as considered by the Supreme Court in the case of *Shaunak H. Sayta* (*supra*).

9. In *All India Institute of Medical Sciences v. Sakshi Mathur: W.P.(C) 9087/2015*, decided on 23.01.2018, this Court had considered the aforesaid decisions and had observed as under;

“12. The CIC rejected the contention that the decision in the case of *Vikram Bhuria* (*supra*) was applicable in the facts of the present case since MBBS Entrance Examination, 2013 was not similar to the entrance examination to a super-speciality course.

13. This Court finds no infirmity with the aforesaid decision. Clearly, a candidate appearing for the MBBS Entrance Examination, 2013 is to be adjudged on his/her knowledge of the science subjects as in the syllabus of class XI and XII. The width of the course available on which questions can be framed for MBBS Entrance Examination is very large.

14. In *Vikrant Bhuria's* case the Court accepted the principle that where the questions are limited and reserved by an examining body, the disclosure of the same would not be in the larger public interest and would subvert the object of the examination. In the present case, this principle has no application as the number of questions that can be put to the examinees is not restricted. Further no such averment has been made in the petition either.

15. The learned counsel appearing for the petitioner further contended that in addition to the issue of having a limited question bank, in *Vikrant Bhuria's* case, the Division Bench had also upheld denial of information on the ground that the examinees had furnished a declaration that they would not carry the question paper from the examination hall and that Court should not interfere with decisions of the academic authorities. This Court is not persuaded to accept the said ground in this case. First of all, there is no such averment made in the petition that candidates appearing for the entrance examination were required to give a declaration that they will not copy the question paper. Secondly, this is not the determinative test that persuaded the Division Bench to uphold the petitioner's contention for denial of information in that case."

10. AIIMS had appealed against the aforesaid decision before the Division Bench of this Court in *All India Institute of Medical Sciences v. Sakshi Mathur: LPA 311/2018*. The said appeal was dismissed by an order dated 28.05.2018, which reads as under:

"The All India Institute of Medical Sciences (AIIMS), the present appellant, questions an order of the learned Single Judge who had rejected its writ petition. The AIIMS had denied the request to the applicant's query with respect to providing information regarding the question paper and the answer key. It had relied upon the previous judgment of this Court in *All India Institute of Medical Sciences v. Vikram Bhuria*; LPA 487/2011 decided on 28.05.2012.

This Court is of the opinion that the Division Bench's attempt to distinguish the ruling of the Supreme Court, in *Institute of Chartered Accountants of India v. Shaunak H. Satya & Ors.* (2011) 8 SCC 781 and *Central Board of Secondary Education v. Aditya Bandopadhyay* (2011) 8 SCC 497 by observing that it is difficult to visualize the kind of exemptions that may exist, and at the same time stating that Section 8 attempts to do so,

cannot be construed as conclusive so as to go beyond the statute and carve out exceptions without Parliamentary sanction. Section 8 of the Right to Information Act significantly starts with the non-obstante clause “notwithstanding anything contained in this Act”. It therefore, constitutes an exception to the general rule of information supply mandated by various provisions of the Act. It is only when the subject matter is such that it falls within Section 8(a) to Section 8(h), is the public body justifiably authorized to withhold the information. The other condition envisioned in the Act is that certain departments and agencies listed in the Second Schedule, are exempt. Barring these two, there is no class of “information” (which is also specifically defined) that is exempt from disclosure. Section 22 of the Act overrides all other enactments including the Official Secrets Act.

Having regard to all these provisions, the Court is of the opinion that there is no infirmity with the direction of the learned Single Judge.

The appeal is consequently dismissed.”

11. The learned counsel appearing for AIIMS fairly states that the decision of the Division Bench in *All India Institute of Medical Sciences v. Sakshi Mathur* (*supra*) fully covers the controversy in this case as well.

12. The petition is, accordingly, dismissed. The pending application is also disposed of.

VIBHU BAKHRU, J

JULY 17, 2018
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