

\$~19

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

+ **W.P.(C) 9087/2015 & CM No.20571/2015**

ALL INDIA INSTITUTE OF MEDICAL
SCIENCES

..... Petitioner

Through: Mr Aldanish Rein, Advocates.

versus

SAKSHI MATHUR

..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% 23.01.2018

VIBHU BAKHRU, J

1. The petitioner has filed the present petition impugning the order dated 20.07.2015 (hereafter 'the impugned order') passed by the Central Information Commission (hereafter 'the CIC') directing the petitioner to provide question papers along with relevant answer key for the AIIMS-MBBS Entrance Examination, 2013.

2. The respondent is a candidate who had appeared in AIIMS-MBBS Entrance Examination, 2013 held on 01.06.2013 and had filed an application dated 03.07.2013 under the Right to Information Act, 2005 (hereafter 'the Act') seeking the following information:-

"Required information

1. Certified copy of Question booklet of AIIMS-MBBS Entrance Examination, 2013 of Roll No.3214065.

2. Certified copy of the OMR answer sheet of Roll No.3214065.
3. Certified copy of the Answer Key of AIIMS-MBBS Entrance Examination, 2013.
4. Certified copy of Marks obtained and the Rank secured by Roll No.3214065.”

3. The information with regard to the question papers and the answer key was rejected by the petitioner as according to the petitioner the same was not in the larger public interest. The relevant extract of the response of the CPIO of the petitioner to the respondent’s application is set out below:-

“Point -1 & 3: The question papers and the answer key of Entrance Examination cannot be provided, as these consists part 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.

Point - 2 & 4: The marks of the individual candidate will be made available on AIIMS website at www.aiimsexams.org and the certified copy of the answer sheet also can be provided after completion of admission process.”

4. Aggrieved by the same, the petitioner preferred an appeal under Section 19 of the Act before the First Appellate Authority (hereafter ‘the FAA’), which was also rejected by an order dated 19.10.2013.
5. 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.
6. The learned counsel appearing for the petitioner sought to assail the

impugned order on the ground that it is contrary to the of the decision of the Division Bench of this Court in ***All India Institute of Medical Sciences v. Vikram Bhuria: LPA 487/2011, decided on 28.05.2012.*** He earnestly contended that the CIC had erred in holding that the said decision did not apply to the facts of the present case.

7. In the case of ***Institute of Chartered Accountants of India v. Shaunak H. Sayta & 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*”.

8. 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.”

9. 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 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.

10. 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*). The Court was persuaded to accept that number of “*multiple choice questions which can be framed for a competitive examination for admission to a super-speciality course dealing with one organ only of human body are limited*”.

11. Clearly the entrance examination to a super-speciality course cannot be equated to an entrance examination for being enrolled in the MBBS Course, where the choice of questions is not limited.

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.

16. The grounds raised in the present case do not refer to any of the contentions sought to be argued on behalf of AIIMS in *Vikram Bhuria* (*supra*) case. In the present case, the first ground mentioned in the petition (although not canvassed by the learned counsel) relates to Section 8 (1) (h) of the Act. According to AIIMS, the information sought is exempt from disclosure under Section 8(1)(h) of the Act, which reads as under :-

“8. Exemption from disclosure of information - (1)
Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, -

(h) information which would impede the process of investigation or apprehension of prosecution of offenders.”

17. As is apparent, the said ground (Ground A) is wholly bereft of any merit as there is no issue regarding any investigation or apprehension or prosecution of offenders. AIIMS has also referred to a case of manipulation of OMR sheets in a P.G. Examination conducted by AIIMS in the year 2010. This case has no relevance to the issue at hand.

18. The ground (Ground B) that the impugned decision is contrary to the decision in the case of *Taylor v. Taylor: 1875(1) Ch.D 426* and *Nazir Ahmed v. Emperor: AIR 1936 PC 253* is equally unmerited. To be fair to Mr Rein, the learned counsel for the petitioner, this ground was also not urged by him.

19. There is no material on record, which would substantiate any of the contentions advanced on behalf of AIIMS. Apart from asserting that the impugned order is erroneous and contrary to the decision in *Vikram Bhuria* (*supra*), there is nothing in the pleadings that would support the contentions urged on behalf of AIIMS.

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

JANUARY 23, 2018
MK

VIBHU BAKHRU, J

