

Professional Examinations Board, Bhopal
Chayan Bhawan, Main Road No.1, Chinar Park (East), Bhopal - 462011

—ORDER—

No. PEB/ ^{12/110/21/cont} /7264 /2021

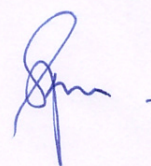
Bhopal, Date 16.12.2021

That vide Letter No PEB/12/110/Cont/5080/2021 dated 14.09.2021, a notice regarding termination of contract for events of default (hereinafter referred to as "**Termination Notice**") was issued to M/S NSEIT Limited (hereinafter referred to as "**NSEIT**"), with whom Professional Examination Board (hereinafter referred to as "**PEB**") had entered into a contract vide agreement date 15.10.2020 after RFP dated 22.08.2020 for selection of agency for management of examination centre and supply of examination engine. This order is issued in furtherance to the above-mentioned termination notice and draws its legality from the RFP/Agreement between the two parties.

2- Agreement Clause 17.1 provides for termination in the event of default. Before a decision was taken in this regard by the competent authority (Director, PEB), in the interest of fairness, transparency, and in adherence to the principles of natural justice, an opportunity of hearing was granted to NSEIT to respond within 30 days why their contract should not be terminated for default.

3- NSEIT, in its interim reply dated 9.10.2021, sought for further information, additional time to respond, and a personal hearing. All information relied upon by PEB for issuing the termination notice were promptly shared with NSEIT vide letter PEB/12/110/Cont/6302/2021 dated 9.10.2021, and an additional time of seven days was granted to respond. Although there is no provision in the agreement, NSEIT was accorded personal hearing in good faith and in strict adherence to the legal maxim *audi alteram partem*.

4- The detailed written response (hereinafter referred to as "**final response**"), along with annexures, was received from NSEIT on 21.10.2021. On 22.10.2021, NSEIT's team of technical, managerial, executive and legal representatives made a presentation in the personal hearing before the Director, PEB. The proceedings were minuted, videographed and shared with NSEIT on the same day.



5- On 3.11.2021, again a communication was sent by MD & CEO NSEIT seeking 4 weeks additional time for its independent director Dr Gulshan Rai to review all information and provide his findings. The request was accepted in view of the expertise of the concerned independent director in matters of cyber security, and in good faith. Dr Gulshan Rai made a presentation on 29.11.2021 (hereinafter referred to as "**independent director's presentation**") and another letter dated 02.12.2021 was received from NSEIT CFO (Financial, Legal & Compliance) with a note re-evaluating the events. All of these have been taken into consideration while taking decisions in this regard.

Chronology of events-

6- The entire chain of events is recapitulated as under. After the Kisan Kalyan and Krishi Vikas Vibhag Recruitment Examination (hereinafter referred to as "**KKRE**") was held on 10th and 11th of February, 2021, PEB was in receipt of complaints that certain candidates obtained very high scores despite their poor academic accomplishments. After internal preliminary analysis, PEB found that high scoring candidates appeared only on the 11th February shift. Therefore, it was contended that since the question paper difficulty levels are comparable in multiple shift exams, the possibility of such a scoring trend in only a single shift was not very likely. Thus, the enquiry was handed over to MP State Electronics Development Corporation (hereinafter referred to as "**MPSEDC**"), which is an independent, autonomous and technically competent government body, external to PEB. Technical experts from MPSEDC provided their final report dated 27.03.2021 on KKRE after analysing server logs, CCTV records, process documents, candidate audit trails, etc.

7- MPSEDC KKRE report, based on its correlation of timestamp of VPN logs and FTP logs, revealed that **on 10th February, beyond the confidential room entry register timings, a question paper download activity occurred using VPN id 'vpntest1', and application id 'controller', in a computer which is not the one kept inside the PEB's confidential room.** The report also underscored the aberrant performance behaviour of high scorers in the exam shifts on 11th February 2021.

8- As per PEB's Standard operating procedure (hereinafter referred as "**SOP**"), all question paper related activities have to be performed in the exam conducting agency's examination software in the joint presence of PEB Examination Controller, Exam conduction agency's technical support staff (hereinafter referred to as "**Deputed**



person”), and Central Observer appointed by PEB, in the computer kept inside the confidential room of PEB. Entry and exit to and from this room are recorded manually by visitors in a register kept outside this room. User access and authorization rights in the exam conduction software of NSEIT, are clearly defined between PEB controller, NSEIT and question bank agency. Multiple levels of password protection are put in place to ensure secure access to questions papers and their invisibility till examinations.

9- In view of the above SOP, the download activity, mentioned in MPSEDC report to have occurred on the 10th February, i.e. before the examination scheduled on 11th February forenoon began, was unauthorised and a clear violation of SOP. Whether the downloaded question paper was put to misuse/leak is not being postulated. The download activity, in itself, is entirely unacceptable, and a reason sufficient enough to put the integrity of the examination process in doubt, vitiating the credibility of conduct of free and fair examinations.

10- A video conference meeting was conducted on 27.03.2021, with NSEIT representatives to bring to their notice, briefly enquire about the findings from MPSEDC report, and to understand NSEIT's side on why this download was made. After the meeting, NSEIT clarified via emails on 5.04.2021 and 7.04.2021, as follows -

“Access is available for FTP via the controller ID which was given to him for initial QC purpose.. “Him” is the controller support staff provided at PEB office during mock and exam days. Access was provided to “him” during the initial kick off for operational due diligence.. As a part of operational due diligence the QP uploaded undergoes sanity checks.. It was with the same intent that this activity was performed on 10th.. This activity was a regular operational check.. Although the zip files were downloaded, the entire QP can only be viewed with an encryption password which was provided by Board (Controller) at the end of the day..”

11- Thus, it could be clearly arrived from these responses that NSEIT admitted that this download activity, identified in the MPSEDC report to have been made beyond the confidential room register entry timings on 10th February 2021, was done by the NSEIT deputed person, using the controller's credentials provided to him during 'initial kickoff', to access FTP (which contains the question paper folder), for reasons of 'operational due diligence' and for 'undergoing sanity check'.



12- NSEIT did not, at that stage, respond to PEB's query about which computer (machine) this download happened at. As per MPSEDC report, this download was correlated to have been done using 'vpntest1' VPN id, which is machine-bound (i.e., only this machine can login using that VPN id) to the machine of NSEIT's deputed person. This same machine, as per log trails, is being regularly used for doing mock examination related activity and post-examination question paper viewing activity. So it is clearly established that the machine used for this unauthorized download activity belongs to the NSEIT team.

13- To the email queries of PEB viz. *"Why FTP access given for QC purpose is still being retained? Why is it being done beyond the entry-exit timestamp of PEB confidential section computer access register? Why is the file being downloaded using controller username and not the username provided to the deputed person? Why controller username activity is permitted in a machine that's not of PEB?"*, NSEIT reply email 7.04.2021 mentions-

"It is an audit oversight, which will be handled immediately.. Will be addressed in future exams.. Will be corrected with immediate effect.. Will be addressed with immediate effect"

14- NSEIT thus agreed that the activity done by the deputed person using the controller's credentials was not proper by acknowledging it repeatedly as 'audit oversight' and to be 'corrected/addressed immediately'. This admission further corroborates the fact that the NSEIT machine was used.

15- The purpose of download mentioned by NSEIT (*operational due diligence and undergoing sanity checks*) do not appear logical given the timing of the download. As per logs, the unauthorised download was made after the start batch SMS activity for the 10th February afternoon exam and the question paper push activity for the 11th February forenoon exam. That is, the 11th February forenoon exam question papers had already been verified in the joint presence of controller, Central observer and NSEIT deputed person, before this unauthorised download occurred. So, even if any errors were to be discovered by the deputed person during this 'sanity check', as claimed by NSEIT, it would be too late to make any corrective action. The same has been classed as doubtful activity in independent director's presentation also. Thus, downloading Question papers for the purpose of doing Sanity check (as claimed by NSEIT), by the NSEIT deputed person



outside the PEB confidential room, at that point of time, is totally unacceptable and violative of PEB's SOP.

16- PEB is an examination conduction body for recruitment to various posts in government departments. These examinations are very competitive and it is the cardinal duty of PEB to ensure that the examination process is not vitiated, by ensuring strict adherence to the established SOPs and norms to maintain sanctity and invisibility of question papers till the examination shift begins. SC Judgement dated 28.04.2017 in Gohil Vishvaraj Hanubhai vs State Of Gujarat mentions-

“Purity of the examination process - whether such examination process pertains to assessment of the academic accomplishment or suitability of candidates for employment under the State - is an unquestionable requirement of the rationality of any examination process”.

17- PEB, thus, held that the download activity detected in MPSEDC KKRE report has certainly put a question mark on the purity of the examination process. NSEIT's outlook on the download activity, as could be evinced from their email responses, appeared to be that it was a plain audit oversight, done for operational due diligence, and non-serious enough to be taken care of in future examinations. They have tried to make this serious lapse appear very trivial. This was unsettling to our institution because accessing question paper folders, and downloading them before exams are conducted, is a critical oversight which cannot be taken lightly and be left for corrective action just in future. PEB had to ensure that other exams already conducted using NSEIT's services also did not suffer from questionable integrity after all.

18- Therefore, it was decided to scrutinize the result data of all the other examinations conducted by NSEIT for PEB, though no complaints were received about them. The MPSEDC KKRE report findings were kept confidential until further investigation. Similar analyses using server logs were done with the help of MPSEDC for Group-2 Subgroup-4 recruitment exam (hereinafter referred to as "**G2SG4**") and Group-5 paramedical nurses recruitment exam (hereinafter referred to as "**K paper**") wherein candidate result data showed serious scoring anomalies between shifts of equivalent difficulty level question papers .

19- In the MPSEDC G2SG4 final report dated 1.06.2021, aberrant performance behaviour of high scorers was reported only in the shifts on 31st January 2021 (exam



dates were 29, 30 and 31 January, 2021). A download activity was detected on 30th January using VPN id 'vpntest1' and application id 'controller', outside confidential room entry register timings. This was exactly similar to the KKRE case and a violation of SOP to download papers outside the confidential room before exam completion, giving sufficient reason to render the purity of the examination process questionable.

20- In the MPSEDC K paper final report dated 1.06.2021 also, aberrant performance behaviour of high scorers was reported only in the shifts on 13th January 2021 (exam dates were 12 and 13 January, 2021). From the log analysis, there were events of question paper download on 6th and 7th January using application id 'poonam'. 'poonam' application id and VPN id 'mdagency' are allotted to the question paper agency. MPSEDC K paper report (page 23) mentions-

“even without the presence of any access logs for VPN user mdagency, multiple FTP activity was seen for username 'poonam'. Hence either VPN logs are partial or some other VPN username or mechanism was used by username 'poonam' to access the FTP server”,

thus giving reason to apprehend that the established SOP has been bypassed to access the FTP folders.

21- There is also a log of question paper upload activity on 11th January from 'controller' application id which was not done from the confidential room as per entry register. As per report (page 36), this upload was done from a new laptop/machine (different from the NSEIT deputed machine used regularly for performing mock examination related activities) which is “used and approved for VPN username 'vpntest1”.

22- As described, the MPSEDC K paper report revealed multiple logs that were not permitted according to PEB SOP. However, the report was inconclusive on the VPN/machine on which the download activities were performed, stating that it could be due to partial logs or existence of other access mechanisms bypassing the SOPs of PEB.

23- When the Question paper agency, Meta-I, was asked about usage of 'poonam' application id to download question papers, they responded that they did not connect to VPN or make downloads of any question paper related file on 6/1/21 or 7/1/21. They also mention that VPN connection is not required for question authoring activity or making render checks, or for checking whether the encryption passwords are working. Therefore



to hear NSEIT's stand on all these points, again a video conference meeting was organised on 28.05.2021, and a follow-up questionnaire was mailed to NSEIT on 10.06.2021.

24- The main focus of questions of PEB was to understand-

- i. whether the NSEIT deputed person (and NSEIT machine) is doing these question paper folder downloads without the joint presence of controller and Central observer, beyond the confidential room access timings,
- ii. whether the NSEIT deputed person got access to controller's/poonam's credentials,
- iii. who the NSEIT deputed person is (Vide Letter dated 12.12.2021, NSEIT deployed Mr Aditya Narayan Mishra in addition to Mr Amir Khan as their resource persons at PEB),
- iv. whether the new laptop/machine which performed upload activity using controller's credentials on 11th January belonged to NSEIT,
- v. whether PEB controller had permitted the deputed person of NSEIT to use his credentials anywhere, and
- vi. if there were any possibilities of erroneous logs being recorded in NSEIT software.

25- In the VC meeting on 28.05.2021, NSEIT representatives clarified as follows-

"within FTP, only controller and Poonam can access the question bank related folders; however, for operational convenience, others can use these application usernames and access the question bank related folders",

"never emphasized PEB on changing the password after first login, and PEB never changed the password, this operational lapse is now noted and in future it will be enforced that passwords will be changed in first login",

"After the exam date is over, the exam QB cannot be replayed on the live agency portal. Mr. Amir's laptop has the local agency portal in which he viewed the QB. Hypothetically speaking, he can view all question papers, but only if he had the encryption key passwords"

"As Amir User ID was yet to be provisioned, controller ID was used for uploading mock QP"

"Amir's old machine permission was decommissioned and moved to the new machine"

26- NSEIT responded to PEB's follow-up questionnaire on 3.07.2021. Relevant extracts from this response are as follows-



"request was not made by controller PEB for his username to be used by someone else outside the confidential computer room",

"NSEIT has never claimed there is a feature to enforce password change option in first login",

all examination "logs were in place and recorded correctly as per the regular process",

"the permitted timeline for QB generation work is after completion of the examinations",

"Mr. Amir downloaded the QP after completion of each examination on daily basis, as this practice was followed for operational convenience",

"Mr. Amir never had visibility to the encryption keys as it was always maintained by the PEB controller and disclosed only after the examinations",

"NSEIT was aware that Amir was using controller username",

"Mr. Amir used both the IDs ('controller' and 'kalai') for operational convenience"

"NSEIT seeks time to collate the data and provide correlation of Poonam username with the VPN",

"Mr. Amir was not able to start the laptop and the same was brought to our notice. Later after examination of the said laptop it was observed that there was some issue in the RAM slot. In order to continue with the examination activities without any obstruction, Mr. Amir was allocated a new Laptop from Bhopal Center".

27- Based on these clarifications provided by NSEIT over email and on the video conference meeting, it could be clearly established that-

I. The question paper download and upload activities were done using 'controller' id multiple times, without the joint presence of PEB controller and central observer, and outside the confidential computer room of PEB.

II. A new laptop was issued by NSEIT and used by the NSEIT deputed person on 11th January but this was never informed to PEB.

III. It was also admitted by NSEIT that though the deputed person Mr Amir was assigned to PEB project since November, his ID was not provisioned till January and he has been using multiple IDs (including that of controller) for accessing FTP content folders and doing mock examination related activities, for reasons claimed as '*operational convenience*'.

IV. NSEIT also admitted that its deputed person had been doing the post examination question paper view activity every day, instead of the permitted timeline for the activity at the end of the entire examination, for reasons claimed as '*operational convenience*'.



V. Controller PEB had never permitted his credentials to be used by NSEIT outside the PEB confidential room.

VI. As per NSEIT, all examination logs were properly recorded without glitches.

28- As per PEB SOP, the Question Paper agency sends the encryption passwords by SMS to controller PEB, and then the controller shares them with the deputed person after the entire examination process (all shifts of all days) was complete. It is not known how the deputed person viewed the question papers everyday, and obtained the encryption passwords everyday, while PEB controller had shared them only after the finality of all exam shifts of all exam days.

29- NSEIT's responses-

"Mr. Amir downloaded the QP after completion of each examination on daily basis, as this practice was followed for operational convenience",..... "Mr. Amir never had visibility to the encryption keys as it was always maintained by the PEB controller and disclosed only after the examinations",..... "After the exam date is over, the exam QB cannot be replayed on the live agency portal, Mr. Amir's laptop has the local agency portal in which he viewed the QB"-

all of these statements put together are contradictory to each other. Further, the timing of download for operational due diligence and checking the question papers for sanity towards the end of the exam, just before the last day, was not convincing. NSEIT mentions that the controller did not allow for his credentials to be used outside the confidential room, and also that NSEIT was aware that Mr Amir was using the controller's username. It certainly takes us to conclude that the exam process was compromised by NSEIT's deputed person.

30- NSEIT has repeatedly mentioned that *the downloaded files could not have been viewed/leaked/put to misuse, because there are four levels of protection and to open and view the encrypted question paper in a readable (cleartext) format, the encryption key (encryption password) is a mandatory requirement.* In its personal hearing dated 22.10.2021, NSEIT representatives stated that *even if all passwords were available with someone, the computer required a test matrix to view the question paper and the test matrix is unique to each examination (also mentioned in Final response Para 15 I A b viii, and letter dated 2.12.2021).*



31- PEB does not postulate whether the downloaded question paper was put to misuse/leak. That is a matter of further investigation by competent agencies. PEB only holds that the unauthorised download activities are in itself violative of SOP and a reason sufficient enough to cancel the examination whose integrity has been put into doubt. NSEIT deputed person & NSEIT approved machine have made multiple unauthorised activities using multiple credentials (including 'controller' id), without the joint presence of PEB controller and central observer, and outside the PEB confidential room, and therefore the matter is clearly attributable to NSEIT.

32- The aberrant candidate high scoring behavior only in the last day of examination was an added ground, a behavior which renders the score normalisation formula of PEB ineffective. It would have been unethical for PEB to declare the results of the examinations in which such unauthorised activities occurred. Thus, inspired by SC judgment in Sachin Kumar v. Delhi Subordinate Service Selection Board dated 03.03.2021 which mentions-

“Recruitment to public services must command public confidence. Persons who are recruited are intended to fulfil public functions associated with the functioning of the Government. Where the entire process is found to be flawed, its cancellation may undoubtedly cause hardship to a few who may not specifically be found to be involved in wrong-doing. But that is not sufficient to nullify the ultimate decision to cancel an examination where the nature of the wrong-doing cuts through the entire process so as to seriously impinge upon the legitimacy of the examinations which have been held for recruitment”,

PEB proceeded to cancel all those three recruitment examinations by order PEB/Dir/13/2021/3047/2021 dated 28.08.2021 and ordered re-examinations. Subsequently, holding NSEIT responsible for its various lapses and unauthorised activities performed in violation of PEB SOPs, the termination order dated 14.09.2021 was issued.

Decision on preliminary point

33- The final response of NSEIT (paras 9-12)states-

“it would be just and proper for PEB to consider and decide, as a preliminary point, whether a final decision can or ought to be taken in the matter at this stage when-

- 1. the investigation by an external investigation agency is admittedly pending and inconclusive at this stage;*



2. *The issue of the Investigation by an external investigation agency is already sub judice in the W.P filed by NSEIT, which is pending before the Honorable High Court; and*
3. *NSEIT is yet to receive all the requisite documents from PEB."*

Therefore, after presenting the chronology of events that led to the issuance of the termination notice, as per NSEIT's contention, the above preliminary point is being decided first.

34- Addressing whether a decision can be taken by PEB while **"Investigation by an external investigation agency is pending and inconclusive"**-

As an examination conducting body, PEB has limited scope, expertise, and authority within law to conduct any kind of further criminal investigation by requisitioning the devices of NSEIT or to enquire NSEIT personnel/ examination candidates who obtained aberrantly high scores in the last shifts. Therefore, vide Letter PEB/3049/2021 dated 28.08.2021, PEB requested detailed investigation in the matter to be done by the State Cyber Cell.

35- In its personal hearing dated 22.10.2021, NSEIT representatives stated that *server logs cannot be created retrospectively to represent a non-existent activity and assured that none of the logs provided by NSEIT to PEB were tampered with.* They also mentioned that *there was no intrusion or hack of any sort by any third party outsider into the examination software on the above mentioned examination processes.*

36- MPSEDC, an independent external agency with expertise in technical matters concerned with the conduct of examinations, has provided its final report in this matter. NSEIT has, as described in the earlier section, admitted that a NSEIT deputed person made these downloads on a machine outside the confidential computer room. It has been reasoned out above that the download events are in clear violation of PEB SOP and have taken place in NSEIT's examination infrastructure. It has also been deliberated in detail that NSEIT has not been able to provide any satisfactory response as to why the downloads have taken place before the end of exams, and why sanity checks were necessary just before the last day of examination. Further investigation pending at Cyber cell would only help in ruling out/confirming question papers misuse, but it cannot deny that the question papers were never downloaded at all, because server logs confirm the download activity and even NSEIT has agreed that the logs were not tampered with.



37- The independent director's presentation, claimed to be made after making an independent unbiased enquiry on KKRE, only produced parallel findings to what PEB concluded from MPSEDC reports and corroborated PEB's findings. Letter dated 2.12.2021 mentions that NSEIT has placed its employees - Amir Khan and Aditya Mishra (deputed persons for PEB) - on suspension with immediate effect, as a result of their internal enquiry.

38- Thus it is clear that there is no bar on taking a decision on the termination notice pending cyber cell investigation, because there is conclusive log proof for the unauthorised activities revealed in the MPSEDC reports, and admission by NSEIT regarding the same.

39- The second scenario mentioned by NSEIT in its final response is that **"Investigation by an external investigation agency is *sub judice* in the W.P pending before the Honorable High Court"**-

It is clarified at the outset that PEB's letter for investigation by an external agency or cancellation order dated 28.08.2021 have NOT been challenged by NSEIT till date, and are therefore NOT *sub judice*. Only the termination notice dated 14.09.2021 has been challenged by NSEIT before the Honourable High Court of Madhya Pradesh, Jabalpur in a Writ Petition W.P. 21835/2021, with a prayer to quash and set aside the termination notice and any other proceedings in pursuance or furtherance of it, and to issue directions restraining the respondent from taking any adverse or coercive action against the petitioner. The case was heard on 11.10.2021 and 15.11.2021 but Honourable High Court of Madhya Pradesh, Jabalpur has not, till date, issued any directions or stay orders, staying the proceedings that legally and consequentially ensue from the termination notice.

40- It is a well-settled principle in law that a show cause notice, which is issued to provide an opportunity of hearing to the potentially affected party, can usually be challenged only if and when it is issued in violation of jurisdiction, without authority, or beyond the period of limitation. Termination notice dated 14.09.2021 was issued in respect of the obligations of NSEIT to PEB, that emanate from our RFP/Agreement, by the competent authority. The competent authority, as Respondent-1 in the W.P. is liable to oblige the writ/directions of the Honorable High Court of Madhya Pradesh, whenever it is



passed. Additional time has been provided more than one time, at the request of NSEIT, giving them ample opportunity to represent their case. Therefore, it is humbly believed that, in the absence of any orders to stay/restrain proceedings, there is no bar to issue this order, while the W.P. is pending disposal.

41- The third and last scenario mentioned is that “**NSEIT is yet to receive all requisite documents from PEB**”. At the outset, PEB is not legally obligated to share any documents as per agreement terms with NSEIT. However, in the interest of justice and transparency to NSEIT, vide letter PEB/12/110/Cont/6302/2021 dated 9.10.2021, PEB has already shared all relevant information, reports and NSEIT's own replies, which formed the basis of PEB's decision to cancel the examinations, as well as to issue the termination notice. The reasons for not providing the information requested by NSEIT in Annexure-1 of its interim response dated 9.10.2021 at serial numbers 3,4,5,7,8 and 9 have been indicated in PEB's letter dated 9.10.2021. NSEIT had duly acknowledged the receipt of documents sent on 9.10.2021 by revert mail, and also through its Learned senior counsel in the W.P. while the case was heard on 11.10.2021. Thus all relevant documents have been made available to NSEIT. And only after that, NSEIT submitted its detailed final response and made its presentation in a personal hearing before PEB. NSEIT's letter dated 2.12.2021 again sought for VPN logs available in the database of the VPN server hosted in the State Data Centre (SDC). Clarification from SDC clearly states that the NSEIT infrastructure is in co-location mode and that they do not have any logs or credentials in their possession. Thus, all logs are available with NSEIT only, and the entire incident report was based on analysis, by MPSEDC experts, of the logs provided by NSEIT only.

42- Thus, it would not be deemed improper, premature, inappropriate, or violative of principles of natural justice, for PEB to pass this order in furtherance to the termination notice dated 14.09.2021 at this stage, in view of the reasons elaborated above.

Para-wise deliberation of final response dated 21.10.2021-

43- Now, the order is passed on the merits of the points mentioned in the Termination notice dated 14.09.2021, after careful scrutiny of and taking into consideration ALL the documents and information submitted and/or referred by NSEIT in their written responses and personal hearing. Every effort has been taken to make this a speaking order, clarifying the reasons based on which the decisions have been taken, so that it gives the aggrieved party with details and also withstands judicial scrutiny.



44- Final response Paras - 1, 3, 4, 5, 7, 14, 15 I a, 15 II a, 15 II A a ii-vi, 15 II B a, 15 II B d, 15 II B e, 15 II C a ii, 15 II C a vii I, 18, 19, 20 - No remarks are being made, as they are general statements, if any specific denial is required by PEB, it shall be done before court of law. It appears redundant to comment on these points at this stage. All rights and remedies are hereby reserved.

45- Specific denial is made to Final response Para - 15 II A a i, which states that *MPSEDC reports are only draft reports*. (Ground for denial - MPSEDC reports are final and they have been made available to NSEIT).

46- Specific denial is made to Final response Para 15 II A b iv, which states that *COE changed the question paper pull activity process timelines*. (Ground for denial - Question paper mapping activity was done jointly by Controller, Central observer and NSEIT deputed person for all three examinations well within the permissible time-limit of 48 hours as per PEB SOP section 5.6. Question paper pull activity has occurred only before the scheduled 90 minutes by the local exam server, as confirmed in MPSEDC KKRE report).

47- Final response Paras - 8 b, 8 c, 9, 10, 11, 12, 15 II A b viii, 16, 17 - have been deliberated above already while discussing the chronology and deciding the preliminary point.

48- Final response Paras - 6, 13, 15 I, and 15 III - is NSEIT's *response to other communications and notices issued to NSEIT by PEB* in connection with examination services related penalties. The present order is in furtherance only of termination notice dated 14.09.2021. Other penalty orders/notices/W.P are independent in itself, and any fact brought out in NSEIT final response shall be considered while deciding/responding to them separately through a reasoned order/communique.

49- Final response Paras - 2, 8 a, 15 II A b i, 15 II A b ii, 15 II A b iii, 15 II A b v, 15 II A b vi, 15 II A b vii - mention that *the scope of work of NSEIT, as PEB's examination conduction agency, is limited, based on SOPs, and is governed by secure access rights and Authorization*. It has mentioned that it does not have any role in SDC, question paper content development and its management. It states that the NSEIT deputed person explicitly operates under the supervision and direction of the controller. It also mentions



that there are 4 levels of passwords for authentication, and NSEIT has access to only the first two levels of authentication at any given point of time.

50- Responding to these, first of all, NSEIT shared certain process manuals with PEB as part of its RFP inception report requirements. However, several activities were not mentioned in those documents but were performed anyway. Those activities were flagged in PEB's VC follow up questionnaire dated 10.06.2021.

51- Secondly, although examination software being governed by secure access rights and authorization, and NSEIT deputed person explicitly operating under supervision of PEB controller, had to be the ideal case, as admitted by NSEIT in response dated 3.07.2021,

"within FTP, only controller and Poonam can access the question bank related folders; however, for operational convenience, others can use these application usernames and access the question bank related folders".. "NSEIT was aware that Amir was using controller username".. "request was not made by controller PEB for his username to be used by someone else outside the confidential computer room".. "Mr. Amir used both the IDs ('controller' and 'kalai') for operational convenience".. and "Mr. Amir downloaded the QP after completion of each examination on daily basis",

it is evident that NSEIT has breached this secure arrangement of access and authentication rights. It is also evident that the deputed person has not operated in the explicit direction or joint presence of the controller and central observer, but has performed activities violative of PEB SOPs, using controller's credentials outside the confidential room.

52- Thirdly, the exam software was installed and is managed by NSEIT in its infrastructure located at the State Data Centre(SDC). Complete hardware and software setup was done by NSEIT and is being remotely managed by the NSEIT team. The Question Bank Agency uses the NSEIT tool to upload question papers in the FTP server located at SDC. PEB only liaised with SDC to provide infra farm area (physical space) in SDC. Whenever NSEIT requests for physical access to their infrastructure in SDC, PEB approves the request and informs SDC. Thus it is incorrect to state that PEB manages SDC. NSEIT can remotely access and manage the examination software setup in SDC.



53- Finally, question paper encryption and upload is done by the question bank agency in the tool provided by NSEIT. The credentials of question paper agency users for the upload interface tool are provided and controlled by NSEIT. NSEIT admitted in its response dated 3.07.2021-

“NSEIT has never claimed there is a feature to enforce password change option in first login” of controller and poonam users.. NSEIT uses 'Anydesk' to share the screen of the question paper agency's computers for configuration purposes before every exam.. “The Question Bank Agency staff cannot be permitted to do this configuration at their end as this is a technical process and the restore is a NSEIT proprietary activity which cannot be outsourced. Any changes in the process would affect the sanctity of the examinations.”

Thus it would be untrue to claim that NSEIT does not have ANY role in question paper content development and its management.

54- Final response Para 15 II A - **Unauthorised download of question papers** (to be read along with chronology section)

55- NSEIT has since the beginning never denied any of its log records. They never denied the occurrence of downloads. They only claim that downloads occurred for operational due diligence and undergoing sanity checks. They also admitted in their email responses that NSEIT deputed person made those downloads. They admitted that they were aware that he was using controller's credentials to access the FTP folder. However, as a departure from these earlier admissions, in the personal hearing, in final response Para 15 II A b ix, and letter dated 2.12.2021, NSEIT mentions that-

“two VPN ids were active during the time of contention and therefore there is insufficient information to find out which VPN connection was used to download the question paper”.

56- This is an unwarranted departure by NSEIT from its earlier admission that these downloads were, in fact, done by NSEIT deputed person using controller's credentials, for operational due diligence and that they were an audit oversight. NSEIT has also placed the concerned deputed person on suspension, for this same reason. Therefore this submission cannot be considered due to lack of any overwhelming evidence to refute the earlier admissions.



57- NSEIT's deputed person along with controller and central observer, are present in the confidential computer room of PEB, from where authorised VPN access occurs for question paper activities. After the activities are complete, the confidential room computer machine is shut down, all the three persons exit the confidential room and the room is locked again. Thus, even if two VPN ids may be shown as active around the same timeframe, a download made in a timestamp outside entry register timings could not have possibly occurred automatically, in the shut down confidential room's computer, the shut down of which was witnessed jointly by controller, NSEIT deputed person and Central observer. Therefore as per MPSEDC reports, the activities, which PEB holds as unauthorised, have taken place outside the confidential computer room of PEB.

58- NSEIT has not made any specific denial that the download was not done in the deputed person's computer. They only mention that the downloaded question paper cannot be viewed due to its various security features. This has already been discussed above in the chronology of events. At the risk of repetition, PEB does not postulate whether the downloaded question papers were put to misuse/leak. It only holds that the unauthorised download activity is in itself violative of SOP and a reason sufficient enough to cancel the examination whose integrity has been put into doubt.

59- Thus, based on replies of NSEIT, PEB clearly understands that unauthorized downloads have been made multiple times by the NSEIT deputed person accessing the FTP folders in a computer/device outside PEB computer room, without the joint presence of PEB controller and central observer outside the confidential room, in clear violation of PEB SOP, and therefore without doubt, the matter is clearly attributable to NSEIT.

60- Final response Para 15 II B- **Correlation of username "poonam" with VPN** (to be read along with chronology section)

61- As per MPSEDC K paper report, one of the application ids making question paper downloads is username "poonam", which is assigned to the question bank agency. MPSEDC K paper report (page 23) mentions-

"even without the presence of any access logs for VPN user 'mdagency', multiple FTP activity was seen for username 'poonam'. Hence either VPN logs are partial or some other VPN username or mechanism was used by username 'poonam' to access the FTP server".



62- Therefore NSEIT was repeatedly contacted to know from which computer "poonam" username made the downloads. The query was raised during VC clarifications for the first time on 28.05.2021. NSEIT promised that they will provide the correlation soon. On 3.07.2021, their reply mentioned-

"NSEIT seeks time to collate the data and provide correlation of Poonam username with the VPN. Once the data is collated we shall duly respond to the query by 9th July 2021."

63- On 20.07.2021, NSEIT mailed the correlation of poonam username with the VPN for date 29.01.2021, which was not asked for at all. Finally after a mail expressing extreme displeasure was sent to NSEIT on 23.07.2021, a mail was sent on 11.08.2021 named as "User correlation study". This report also did not contain the VPN-username correlation asked for, or mentioned a machine ID on which the VPN connection/FTP activity was made.

64- At the outset, this correlation had to be sought from NSEIT only because its exam software allowed multiple VPN ids to be active simultaneously. That the VPN sessions shall be non-expiring for 24 hours was not mentioned anywhere in the process manual designed for PEB, submitted as part of RFP inception report requirements. As per opinion of MPSEDC representative who was present in the personal hearing,

"User of VPN being active for 24 hours without expiring is a flaw. And the assumption made by MPSEDC was that FTP log server and VPN log server timestamps are the same" and synchronized.

65- RFP Clause 6.12.2.2 states "exam centre software should have seamless integration with central server" which includes in it the requirement of synchronized timestamp between various interfaces. Correlation study dated 11.08.2021 has reported that *there is a time difference of 21 minutes between VPN logs and FTP logs*, which is a serious deviation from the expected norm, that has gone unnoticed at NSEIT level, or not reported to PEB despite knowledge. The request by NSEIT to its independent director to investigate on this matter also, appears limited only to KKRE and not to the other two exams, therefore there was no scope of hearing his views on correlation about 'poonam' username.



66- In final response para 8 a and 15 II A b ix, it is said that *NSEIT is unable to ascertain whether the alleged unauthorized access to question paper was outside PEB's or the question paper agency's system*. PEB holds that this is because of infrastructural flaws in the NSEIT system that they could not identify which system was used to make the connection, or not being reported to PEB despite knowledge.

67- Thus, an irrelevant and incomplete correlation report provided after more than 10 weeks of raising a query casts aspersions on the sanctity of the examination system, standards of technical capability and confidentiality adopted by the agency, and proves its non-performance in accordance with the disclosure clause of agreement.

68- Final response Para 15 II C - **RFP non-compliance**

69- NSEIT signed the agreement with PEB, for performance of its obligations, after full and thorough study of all RFP clauses and accepting them unconditionally. Even till date, the exam-reflection application and SLA monitoring tool, as envisaged in RFP as a requirement, have not been provided to PEB. NSEIT, in its replies, wanted PEB to accept its dashboard facility (available in the exam control room only on exam days) in lieu of this RFP requirement, which is not acceptable to PEB.

70- One of the RFP requirements - Clause 6.19.6 is- "*System should have provision for generating alerts on email and SMS to key officials of IA and PEB in case of security breach or compromise with security standards*". This also has not been compiled with and NSEIT never enabled this feature already provisioned in their tool. Had this been enabled to alert PEB via email/SMS every time a login is made from unauthorised machine, possibly the entire chain of events might have been different. NSEIT's claimed Operational wall and SIEM system did not detect or prevent unauthorised activities, which were not part of PEB SOP.

71- Biweekly logs, exam centre readiness reports, asset register of devices used for examination, were also not provided to PEB by NSEIT as mentioned in RFP. State Data Centre is not managed by PEB, so only NSEIT has access to all logs. A draft of the updated process of workflow to correct audit oversights, promised by NSEIT in mail dated 28.06.2021 was never shared. Lastly, NSEIT claims that it was in continual receipt of work orders from PEB and non compliance was not raised earlier during examination conduct.



It is clarified that PEB has been regularly and immediately informing NSEIT about any or all non-compliances as soon as they were identified. Also, it cannot be held that NSEIT received continuous work orders only because they complied with all RFP obligations.

72- Therefore, even though NSEIT responded para-wise to PEB's RFP non-compliance related queries, their replies were unsatisfactory and they did not pursue to ensure that the unfulfilled/not submitted deliverables were submitted for RFP compliance.

Decision on event of default and termination-

73- After considering each para of NSEIT's final response, subsequent letter and independent director's presentation, it is now imperative to consider whether event of default (RFP Clause 16.1.1) has occurred which warrants termination for default as per RFP Clause 17.1.

74- Firstly, the enquiry through MPSEDC was conducted after receipt of complaints from candidates of ONE examination, however, in the process, the sanctity of those examinations, in which no complaints were received, have also been proven to be questionable.

75- Secondly, reports and NSEIT's responses have led PEB to conclude that unauthorized downloads have been made multiple times by the NSEIT deputed person accessing the FTP folders in a computer/device outside PEB computer room, without the joint presence of PEB controller and central observer outside the confidential room, in clear violation of PEB SOP, and therefore without doubt, the matter is attributable to NSEIT. NSEIT has, in its written responses and personal hearing, not presented any relevant evidence to prove that NSEIT machine or NSEIT deputed person were not involved in any of the activities held as unauthorised. They simply reiterate that the downloads could not have led to a leakage of question paper and try to trivialise a serious lapse by using words such as '*audit oversight*' and '*operational convenience*'. PEB holds that the mere unauthorised activity done in violation of SOP is a serious event of default, breach of non-disclosure clause of agreement, and absolutely unethical. It has affected the integrity of the examination process and has led to great career prospect related inconvenience to candidates too.



76- Thirdly, conduction of examination drives successfully in terms of centre management is an inherent requirement in the scope of PEB's contract with NSEIT, however, that alone is of no value if it is not able to ensure the sanctity of examination processes, including question paper related secure user rights and access control.

77- Lastly, granted extension in timelines for non-compliances of uncritical RFP requirements, or non-provision of reports/data may be considered, provided the security and sanctity of examination conduct process are not in question. However, non-compliance and not remedying critical and security related RFP requirements cannot be tolerated. Though NSEIT might have responded para-wise to PEB's RFP non-compliance queries, their replies were not satisfactory and they did not ensure that the unfulfilled/not submitted deliverables were submitted for RFP compliance.

78- Summing up the events and circumstances arrived after thoughtful consideration of responses by NSEIT,

78I. Multiple unauthorised download activity using controller's credentials outside confidential computer room making the sanctity and integrity of examination process questionable and leading to cancellation of multiple examinations, causing great inconvenience to candidates, recruiting government departments and tarnishing the goodwill of PEB, falls under RFP event of default Clauses 16.1.5, 16.1.10, 16.1.12, 16.1.13, 16.1.15, 16.1.18 and 16.1.20 and a breach of the Non-Disclosure Clause 14.

78II. Non-submission of relevant correlation of poonam with its VPN and submission of delayed and incomplete correlation study report falls under RFP event of default Clause 16.1.2 as a breach of the Disclosure Clause 13

78III. RFP Non-compliance on various project deliverables and certain crucial security alert related requirements falls under RFP event of default Clauses 16.1.10, 16.1.11, 16.1.12, 16.1.13, 16.1.16, and 16.1.18

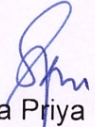
79- Thus, after thorough analysis of all submissions and records, it can be said that mere RFP non-compliance, or non provision of certain reports in a timely manner, as isolated events might not have necessitated the termination of this agreement, as there was an option of getting them corrected in future without adverse impact on examination



purity and process. However, both together, combined with the major SOP violation of multiple unauthorised download activities, leading to multiple exam cancellations solely due to the reason of compromising with the purity and integrity of the examination process, weighs heavily on the gravity of the consequences of default.

80- In view of the analysis and defaults enumerated above, it is clearly neither desirable nor possible for PEB to continue to work with NSEIT. Therefore, after careful consideration of all facts and records placed before PEB, it is ordered that, in pursuance to the termination notice dated 14.09.2021; the agreement with NSEIT date 15.10.2020 shall stand terminated with immediate effect, on accounts of multiple events of Implementing Agency default, in accordance with Agreement Clause 17. All consequences of termination of agreement, listed in RFP/Agreement shall ensue.

(Approved by Chairman, PEB)

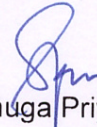

(Shanmuga Priya Mishra IAS)
Director, PEB, Bhopal

No. PEB/ ^{12/110/21/cont} / 7265 /2021

Bhopal, Date 16.12.2021

Copy to:

1. Mr Ganesh Anantharaman, MD & CEO, M/S NSEIT Limited, Mumbai
2. Mr MN Hariharan, Chief Financial Officer (Finance, Legal & Compliance), M/S NSEIT Limited, Mumbai
3. The Chairman, PEB, Bhopal
4. The Principal Secretary, Department of Technical Education, Skill Development & Employment, MP
- ✓ 5. Additional Director, PEB, Bhopal for information and necessary instructions to Legal, PRO, IT, Finance, Meeting Sections and PEB official website
6. Controller, PEB, Bhopal for information and necessary instructions to all Examination Sections


(Shanmuga Priya Mishra IAS)
Director, PEB, Bhopal