Bengaluru Civil Court's Gag Order

Why in news?

Tejasvi Surya, the BJP's MP candidate from South Bangalore, has got a temporary order from a Bengaluru court against reporting "defamatory" news about him.

What is the court's order?

- The court order bars 49 media outlets from publishing "false, malicious and derogatory" news about Mr. Surya.
- Significantly, these included English and Kannada newspapers and TV stations as well as social media giants like Facebook and Google.
- The court issued the temporary injunction under Order 39 of the Civil Procedure Code.
- Based on the order of the city civil judge, Mr. Surya's advocates issued notices to the media.
- They were instructed to not publish any scandalous and defamatory statements or any fake news against Tejasvi Surya.

What is the court's rationale?

- Surya had approached the city civil and sessions court after "me too" tweets and messages related to him emerged on social media.
- A copy of a Twitter publication that is called 'Me too case against Tejaswi Surya' was produced before the court.
- Based on this, the court order took note of two factors in granting Mr. Surya's request for an injunction:

1. some allegations against him surfaced after he filed his nomination papers
2. "some defamatory messages" against him "are in transit" in the media

Why is the order disputed?

- **Freedom of speech** - The Bengaluru civil court's blanket order is contrary to the law and the Constitution.
- The gag order obtained by the Lok Sabha candidate violates the basic principle in free speech law.
- The law on free speech bars 'prior restraint' or pre-censorship of any publication, including the media.

- In R. Rajagopal case (1994), the Supreme Court noted that there is no law that authorises prior restraint.
- Recently, in 2017, the Court made it clear that pre-broadcast or pre-publication regulation of content was not in the court's domain.
- **Rationale** - The existence of a prima facie case is a precondition for an interim injunction to prevent further publication.
- Also, a restraining order may be obtained only if some material deemed defamatory has been published.
- In the present case, only a twitter publication was cited.
- So grouping the print and electronic media outlets along with the above fails the test of law.
- Notably, these had not previously disseminated anything defamatory about the individual.
- Moreover, the judge cited a 1986 Karnataka High Court decision in this regard.
- But the High Court's justification for an injunction concerned a particular individual who had made defamatory comments.
- In contrast, in this case, the restriction is issued against a class of persons, the media outlets.
- **Election** - The allegations that have aggrieved Mr. Surya seem to originate in an individual's opinion on him on Twitter.
- It is possible that this piece of information was or is likely to be used against him by his electoral rivals.
- However, this cannot be a reason for a public figure of a major political party to claim a right to gag the entire media from writing about him.
- The order may be used to prevent the media from writing anything adverse to his campaign.
- It may also prevent defendants in a future proceeding from using 'publication of the truth in the public interest' as a defence.
- Requests for restraint orders against media outlets seem to find favour with some civil judges in Karnataka.
- The Karnataka High Court or the Supreme Court must examine this trend and strike down such blanket gag orders.

Source: Indian Express, The Hindu