Kerala High Court In Media One Case

What is the issue?

The Kerala High Court upheld the order of the Union Ministry of Information and Broadcasting revoking the broadcast license granted to Malayalam news channel Media One.

What is the case about?

- The Information and Broadcasting Ministry (I&B) informed Media One news channel that its broadcast licence had been cancelled, citing a Home Ministry order that had denied security clearance to the channel.
- The writ petition was filed by the company running the channel.
- The Kerala High Court granted a stay allowing the channel to continue functioning and reserved its order.

What is the High Court's order in the case?

- The court seems to have endorsed the Government's stand that it was a national security issue and, therefore, there was no need to observe the **principles of natural justice**.
- The court chose to accept the submission of documents by the government in a sealed cover and agree with the authorities that there were intelligence inputs that warranted the denial of security clearance.
- **Inference-** The court's decision goes against emerging jurisprudence that any restriction on fundamental rights must not only be reasonable but also withstand the **test of proportionality**.
- Broadcasting involves the inter-connected rights concerning media freedom, freedom to disseminate information and the freedom to consume information which fall under the framework of freedom of speech and expression **(Article 19(1)).**
- The court verdict has negated not only the channel's right to broadcast but also its viewers' **right to know.**
- **Pegasus case**- The court dismissed the precedent set in the recent Pegasus case that national security cannot be used as a pretext to avoid any judicial examination of restrictions imposed by the state.
- It endorsed the right to privacy and reiterated that raising the spectre of national security did not give a free pass to the Government.

What kind of powers do I&B Ministry have?

- **Powers-** The powers to regulate content rest only with the I&B Ministry however, the ministry relies on inputs from other ministries, as well as intelligence agencies.
- **Sectors-** Earlier, I&B Ministry had the powers to regulate content across all sectors — TV channels, newspapers and magazines, movies in theatres and on TV, and the radio, barring the internet.
- On February 25, 2021, the **Information Technology (Intermediary Guidelines and Digital**

Media Ethics Code) Rules, 2021, extended its regulatory powers over internet content, especially on digital news platforms and OTT platforms such as Netflix, Amazon Prime or Hotstar.

- **TV channels**- The ministry has the Electronic Media Monitoring Cell, which tracks channels for any violations of the programming and advertising codes mentioned in the **Cable TV Network Rules, 1994**.
- Violation can lead to revocation of a channel's uplinking licence (for sending content to a satellite) or downlinking licence (for broadcasting to viewers through an intermediary).
- The government came up with a three-tier grievance redressal structure (the channel, a self-regulatory body of the industry, and finally the I&B Ministry) for viewers to raise concerns.
- The I&B Ministry can issue a showcause notice to the channel, and then refer the issue to an inter-ministerial committee (IMC).
- **OTT platforms**- For content on OTT platforms too, there is a similar structure.
- **Film certification**- The Central Board of Film Certification (CBFC) has a mandate to give a film, a rating, indicating the kind of audience it is suitable for.
- In practice, the CBFC has often suggested changes or cuts to a film before giving it a certification.
- While it isn't the CBFC's mandate to censor a film, it can withhold giving a rating unless the filmmaker agrees to its suggestions.
- **Print media**- Based on the recommendations of the Press Council of India, the government can suspend its advertising to a publication.
- **Websites-** Last year's IT rules allow the I&B Ministry to issue orders to ban websites based on their content.
- **Emergency powers-** The I&B Ministry adopts emergency powers it has under the new IT Rules to block certain YouTube channels and social media accounts based on inputs from intelligence agencies.

What kind of content is not allowed?

- There are no specific laws on content allowed or prohibited in print and electronic media, radio, films or OTT platforms.
- The content on any of these platforms has to follow the free speech rules of the country.
- **Article 19(1)** of the Constitution, while protecting the freedom of speech, also lists certain "reasonable restrictions" including
    - content related to the security of the state
    - friendly relationship with foreign states
    - public order
    - decency
    - morality, etc.
- There have been several instances when cases have been filed against filmmakers, channels etc for alleged offences such as hurting religious sentiments.
    - For instance, Tandav on Amazon Prime became the first show on an OTT platform to edit out certain scenes that hurt religious and caste sentiments, after direct intervention by the I&B Ministry

What lies ahead?

- Even though courts recognise that the scope for judicial review in matters of national security is limited, any claim that a particular action was based on that ground ought to be substantiated by the Government, even if it is reluctant to disclose all details.

- If this practice of using confidential intelligence claims to revoke the permission given to a channel to operate is encouraged, freedom of the media will be in great danger.

References

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