The Sealed Cover Jurisprudence

Why in news?

As the MediaOne case shows, a judiciary that is a mute spectator to any executive action highlights democratic decay.

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.

To know about the Media One Case, click here

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.
- A Division Bench of the Kerala High Court has also dismissed the appeal filed by MediaOne.
- The High Court reiterated what the top court said in *Digi Cable* case: "In a situation of national security, a party cannot insist for the strict observance of the principles of natural justice".

What are the implications of cancelling the license?

- The move hits the fundamental rights (Art 19 (1)) conferred by the Constitution.
    - The right to freedom of speech and expression of the television channel.
    - The rights to association, occupation and business are

    - The right of the viewers to receive ideas and information
- Article 19(1) can be interfered with are reasonable restrictions under Article 19(2) such as public order, national security, etc.
- The trouble arising from the MediaOne judgment is that the state need not even show that its security is threatened and chose the 'sealed cover' route.
- The current case will have an impact on any kind of dissent against a powerful regime, including political movements and academic criticism.

Why is the jurisprudence of 'sealed cover' an appalling trend?

- **Checks and balances**- India's Constitution does not give a free hand to the executive to pass arbitrary orders violating such rights.
- The process of judicial review holds the executive accountable for its actions.
- The Supreme Court of India has repeatedly held that judicial review of executive action is the basic feature of the Constitution in *Minerva Mills vs Union of India* (1980) and *L. Chandra Kumar vs Union of India* (1997)
- If the executive wishes to limit rights, it must show that the test of reasonable restrictions is satisfied.
- **Impact of sealed cover practice**- The sealed cover practice inverses this position of checks and balances.
- The moment the executive utters 'national security', courts often permit them to inform the justification in a sealed cover.
- These reasons are not disclosed to the party whose rights are clearly at stake.
- The judgment creates a situation that endorses the breach of fundamental rights on the one hand, and blocks remedy for the victim through a court of law on the other hand.
- The Kerala verdict revives the ghost of *ADM Jabalpur case (1976)* which stated that fundamental rights could be suspended during the Emergency, with no scope for assessment by the court.
- At the High Court, national security came to mean absolute impunity for the Centre.
- The judgment has the potential to mark the beginning of the end of a free press in a working democracy.

What resolution is needed?

- **Proportionality** - When an action is alleged to have curtailed fundamental rights, the court is bound to examine the legality of the

action through the lens of proportionality.

- In *Modern Dental College vs State of Madhya Pradesh* (2016), the top court adopted the proportionality test where a limitation of a constitutional right will be constitutionally permissible if
  - It is designated for a proper purpose
  - The measures undertaken to enforce such a limitation are rationally connected to the fulfillment of that purpose
  - The measures undertaken are necessary in that there are no alternative measures that may achieve that same purpose with a lesser degree of limitation
  - There needs to be a proper relation (balancing) between the importance of achieving the proper purpose and the social importance of preventing the limitation on the constitutional right
- This was reiterated in *K.S. Puttaswamy vs Union of India* (2017).
- A three-judge Bench in the Pegasus case (*Manohar Lal Sharma vs Union of India* , 2021) has held that the state does not get a free pass every time the spectre of 'national security' is raised.

Reference

1. https://www.thehindu.com/todays-paper/tp-opinion/sealed-cover-jurisprudence-is-appalling/article65202897.ece

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