

## 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

1. <https://www.thehindu.com/todays-paper/tp-opinion/wrong-signal/article38410399.ece>
2. <https://indianexpress.com/article/explained/explained-ib-ministrys-powers-to-regulate-content-on-tv-other-platforms-7761547/>

