

Supreme Court's public interest immunity claim

April 11, 2023

In news– The SC, which has repeatedly expressed unhappiness with so-called “sealed cover jurisprudence”, also devised a procedure for “public interest immunity claim” as a less restrictive alternative to sealed covers for deciding claims involving state secrets.

Supreme Court on the public interest immunity claim-

- The Supreme Court said that **the validity of a claim involving national security considerations must be based on the test of**
 - Whether there is material to conclude that the non-disclosure of information is in the interest of national security; and
 - Whether a reasonable prudent person would draw the same inference from the material on record.
- However, in the MediaOne case, the court said that even if one assumes that the non-disclosure was in the interests of confidentiality and national security, the means adopted by the government did not satisfy the proportionality standard.
- “The non-disclosure of a summary of the reasons for the denial of security clearance to MBL (Madhyamam Broadcasting Ltd, the company that owns MediaOne) which **constitutes the core irreducible minimum of procedural guarantees**, does not satisfy the suitability prong.
- **The court also said that it assesses the validity of public interest immunity claims, which address the same harms as the sealed cover procedure**, based on the “structured proportionality” standard.
- **This is essentially a “standard of review” used by courts in public interest immunity claims** and the lack

of such a standard in sealed cover proceedings to protect procedural safeguards indicates that public interest immunity claims constitute less restrictive means.

- The court added that **while public interest immunity claims also impact the principles of natural justice, sealed cover proceedings go a step ahead and infringe on the principles of natural justice** as well as the principles of open justice.
- **Alternatively, the court suggested that confidential portions of the document could be redacted**, and a summary of the document's contents could be provided to fairly exclude materials after a successful public interest immunity claim.
- The court said that a public interest immunity claim is a less restrictive means, it also added that dilution of procedural guarantees while hearing the claim could not be ignored.
- It said that **it is only the court and the party seeking non-disclosure of the material who are privy to the public interest immunity proceedings.**
- It was also clarified that the court must consider factors like the relevance of the material to the case while using the proportionality standard to test the public-interest immunity claim.
- While there may be material on serious concerns of national security which cannot be disclosed; the constitutional principle of procedural guarantees is equally important, and it cannot be turned into a dead letter.
- **While the court recognised that public interest immunity proceedings will take place in a closed setting**, it stated clearly that the **"Court is required to pass a reasoned order for allowing or dismissing the claim in open court."**
- At the outset, the Bench said that it was cognizant of the possible objection that "an order justifying the

reasons for allowing the claim would have to inevitably disclose information on the very material that it seeks to protect”.

- However, it stood by the requirement of providing a reasoned order on the principles that went into consideration the same, “even if the material that is sought to not be disclosed is redacted from the reasoned order”.
- The material so redacted would have to be preserved in the court records accessible by the courts in the future if the need arises, the court clarified.

How will appointing an amicus curiae balance concerns of confidentiality and public confidence?

- In the judgment, the court directed how the process of appointing **an amicus curiae which is Latin for “friend of the court”** will unfold.
- **Firstly, the court-appointed amicus, shall be given access to the materials sought** to be withheld by the state.
- **The amicus curiae will be allowed to interact with the applicant** and their lawyer before the proceedings to ascertain their case, and enable them to make effective submissions on the necessity of disclosure.
- However, **the court specified that the amicus curiae shall not interact with the applicant** or their counsel after the public interest immunity proceeding has begun and the counsel has viewed the document sought to be withheld.
- **Finally, the amicus shall to the best of their ability represent the interests of the applicant** and would be bound by oath to not disclose or discuss the material with any other person.
- One of the overwhelming **considerations behind the court giving directions to appoint an amicus as a bridge** between the opposing parties with conflicting interests

in public interest immunity claims was **Article 145 of the Constitution, which warrants that all judgments of SC to be delivered in open court.**

- Article 145(4) lays down that “No judgment shall be delivered by the Supreme Court save in open Court, and no report shall be made under article 143 save in accordance with an opinion also delivered in open Court”.