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BOMBAY HC: ONLINE FANTASY SPORTS GAMING IS LEGIT!

1 July 2019

Introduction:

In yet another judicial pronouncement, which comes as a shot in the arm for the fledgling online gaming industry, the Bombay High Court recently upheld the legality of online fantasy sports gaming.

The growth in the online gaming industry in India has been punctuated by frequent questions primarily in the form of public interest litigations challenging the legality of online fantasy sports games and other games (including their online versions) played with real cash such as rummy and poker.

Games of chance such as betting and lottery fall under the ambit of gambling thereby attracting the restrictive provisions of the central and state gaming laws. However, games involving considerable and substantial degree of skill are not within the purview of gambling laws. While deciding whether a game involves skill or chance, courts in India have consistently adopted the 'predominance of skill' test.

The Bombay High Court vide its judgment in the case of *Gurdeep Singh Sachar v. Union of India and others* dated 30 April 2019, citing previous judicial pronouncements of the Supreme Court and other High Courts, has upheld the legality of online fantasy sports gaming in India and has ruled that such games are preponderantly a game of skill.

Brief Facts:

A petition (criminal public interest litigation) was filed before the Bombay High Court by Gurdeep Singh Sachar (*Petitioner*) against Dream 11 Fantasy Pvt. Ltd. (*Respondent*) seeking directions to initiate criminal proceedings against the Respondent for *inter alia* alleged violation of Public Gambling Act, 1867 (*Gambling Act*), contending that the Respondent was conducting illegal operations of gambling/ betting / wagering in the guise of 'online fantasy sports gaming' in violation of the Gambling Act.

The Respondent in its submissions to the Court, referred to an earlier judgment of the Punjab & Haryana High Court of 2017, filed on similar grounds against the Respondent itself, wherein it was observed that success in Dream 11's fantasy sports depends on the user's exercise of superior knowledge, judgment and attention, which is a matter of skill and not a mere game of chance (*P&H Case*). The court had gone on to hold that Dream 11 is a legitimate business activity protected under Article 19(1)(g) of the Constitution of India. Subsequently, within 5 (five) months of the pronouncement of the judgment by the P&H High Court, the Supreme Court dismissed the special leave petition filed against the said judgment.

The primary issue to be determined by the Bombay High Court was whether the Respondent was conducting illegal operations of gambling/betting/wagering in the guise of 'online fantasy sports gaming' and consequently, was it levying inadequate GST on such services.

Analysis and Decision by Bombay High Court:

The Division Bench ruled that no betting or gambling was involved in the Respondent's fantasy game. The rationale behind the said observation was that the result of any contest on 'Dream 11' game was not dependent upon the real-world result of a match, i.e., upon a team winning or losing a match. The Bombay High Court relied on the judgment of the aforementioned P&H Case regarding the activities of the Respondent wherein it was categorically observed that such games were predominantly games of skill and not games of chance. The Bombay High Court also extracted the relevant portion of the Supreme Court judgment in the case of *K.R. Lakshmanan*, which held that competitions in which success depends on a substantial degree of skill would not amount to 'gambling'. The Supreme Court had (while considering the popular card game 'rummy') observed that despite there being an element of chance in a particular game, if a game is preponderantly a game of skill, it would nevertheless be a game of "mere skill". Relying on the judgments, the Bombay High Court held that the Respondent was not conducting illegal operations of gambling or betting in the guise of online fantasy sports gaming, and the activities undertaken by the Respondent were permitted in law. The court thereafter consequently, held that since online fantasy sports gaming was not gambling, there was no evasion of GST by the Respondent.

Conclusion:

The Bombay High Court reiterated yet again that the yardstick for determining whether or not a game was one of chance or skill, would be whether it is preponderantly one of skill. So long as the answer is in the affirmative, an element of chance would not render it akin to gambling or betting.

Comment:

The Court saw no plausible reason to take a view contrary to the view taken by the courts previously. Thus, this judgment further solidifies the current legal position with respect to online fantasy sports games that such games do not amount to 'gambling' or 'betting' or 'wagering'; and thereby opens up the gates for numerous potential fantasy sports operators to enter the nascent online fantasy sports gaming market in India. This being said, the challenge the industry faces is not from the judiciary, but from the state legislatures - which has used its legislative powers in the recent past to bring within the ambit of local gambling laws, certain games that have previously been held to be games of skill, dealing a body blow to this sector.

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