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Analysing developments impacting business

UPDATE: AFTER MADRAS HC, GUJARAT HC DRAWS ATTENTION OF THE STATE GOVERNMENT TO ONLINE GAMBLING AND THE NEED TO REGULATE THEM IN LARGER

21 October 2020

INTRODUCTION

On the heels of the Madras High Court verdict in *D Siluvai Venance v State* which sought to address the regulatory void in the online and virtual gaming space (*refer to our Ergo*), the Gujarat High Court has pursuant to its judgment in the case of *Amit Nair v State of Gujarat* pronounced on 29 September 2020, reiterated the need for regulation of online gambling. The division bench of the Gujarat High Court has directed the state government to look into the issue of online gambling and take action in accordance with the law in larger public interest before it is too late.

Today, India's gaming industry is among the fastest growing industries. Driven by easy access to smartphones and high-speed data, online gaming continues an upward growth trajectory. The market value of the gaming industry in India was around INR 62 billion (~USD 845.5 million) in 2019 and is estimated to go up to over INR 250 billion by 2024 (~USD 3.4 billion) (*source: Statista.com*). Armed with the largest youth population in the world, India remains one of the most attractive markets including for online gaming. The addition of another 100 million smart phones and continued conversion of 2G and 3G connections to 4G will drive a 3x growth in this segment by 2022 (*source: FICCI EY report 2020*).

However, 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 games played with real cash such as rummy and poker due to the fact that most gambling laws are archaic and are meant to apply to gambling in physical premises and the absence of any re-enactments or substantial amendments to such laws.

The Gujarat High Court dealt with one such public interest litigation in the case of *Amit Nair v State of Gujarat* where it recognized the need for the present gaming legislative framework to include gaming in the virtual, online and cyberspace too.

BRIEF FACTS

A civil writ petition (public interest litigation) was filed before the Gujarat High Court by an advocate Amit Nair (Petitioner) against the state of Gujarat (State) which contended that online gambling platforms are engaged in illegal activities but they remain unchecked / uncontrolled due to certain deficiencies in the Gujarat Prevention of Gambling Act 1887 (Gujarat Act).

The Petitioner prayed before the Gujarat High Court that such online gambling websites and mobile apps which are mushrooming at alarming levels, more particularly “online rummy” should be held and declared bad and illegal as it is in violation of section 4 and 5 of the Gujarat Act and thus be subject to the jurisdiction of the law enforcing authorities in Gujarat.

The Petitioner stated that online gambling games entice individuals with small amount as credit to start playing “rummy” promising significant returns, and such incentives lure people to indulge in gambling and, ultimately, get addicted to the same. The Petitioner in its submission to the Gujarat High Court, referred to a judgment of the Madras High Court, *the Director General of Police, State of Tamil Nadu v Mahalakshmi Cultural Association of 2017 (2012 (2) CTC 484)*, where it was held that “...a reading of the judgment of the Apex Court appears to us that in the event rummy is placed with stakes, the police have the authority to take action as per the provisions of the Chennai City Police Act even though the game involves a skill in that event....” Further, the Petitioner relied on the judgment of the Delhi High Court in the case of *Deepati Bhagat v Union of India and Anr*, where the court had directed the Central and the State government to treat the writ petitions as representations, and decide on whether the online poker gaming websites referred in the pleas should be banned after ascertaining whether they hosted games of skills or chance.

ANALYSIS AND DECISION BY GUJARAT HIGH COURT

The Gujarat High Court directed the State government to consider this petition as a representation and decide whether online games involve gambling. If they involve gambling and are being played in the State of Gujarat, the Gujarat High Court stated that the State is expected to deal with such games appropriately as gaming is a state’s subject.

The Gujarat High Court observed that the Gujarat Act is completely silent on the aspect of “online gambling” and no check or action is being taken when it comes to “online gambling”.

While evaluating the contentions of the Petitioner, the Gujarat High Court also took note of the 2017 amendments to the Telangana Gaming Act 1974 that were made to bring online gaming for money or other stakes within the ambit of the Telangana Gaming Act 1974. The Gujarat High Court has stated that the Gujarat Act also needs to be amended appropriately so as to include “online gambling” within its ambit.

While disposing the public interest litigation the Gujarat High Court concluded that though it cannot exercise its writ jurisdiction to direct the state government to enact a particular type of legislation, it can draw its attention so that the state government can promptly look into the matter at the earliest and do the needful in accordance with law in larger public interest before it is too late.

COMMENT

Stakeholders in the gaming industry have long been urging for an overhaul to the archaic gaming legislations and the need to have in place a comprehensive and robust regulatory regime to govern online and virtual gaming. This would not only curb illegal gambling, betting and wagering activities but also be a shot in the arm to one of the fastest growing industries which has the potential to bring in massive employment and tax collections in government coffers. Absence of a robust and comprehensive legal and regulatory framework hurts legitimate operators more than the illegitimate ones; discourages investment and stifles growth and awareness.

Lately, courts have been proactively nudging the state governments to look into the legislative void around online gaming in the state specific legislations. This order of the

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Gujarat High Court comes on the back of the Madras High Court ruling that emphasized on a regulatory set up to deal with the emerging online games/virtual games as the need of the hour. With this the ball is clearly in one more state government's court and it remains to be seen whether the state governments will exercise their constitutional powers to set up a progressive regulatory regime concerning online and virtual gaming. Courts can only nudge, the push needs to come from the governments.

- *Rishabh Bharadwaj (Partner) and Kevin Shah (Senior Associate)*

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