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MADRAS HIGH COURT SETS ASIDE TAMIL NADU'S BAN ON ONLINE GAMES OF SKILL

16 November 2023 [Background](#)

In a new development in the long-standing tussle between the Tamil Nadu government and online gaming operators regarding prohibition of all forms of online games in the State, the Madras High Court (Madras HC) vide its unreported order dated 9 November 2023 (Order) in *All India Gaming Federation and Others v State of Tamil Nadu and Others* upheld the constitutional validity of the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act, 2022 (Act) and clarified its application to games predominantly involving an element of chance. The Madras HC followed the extant jurisprudence regarding games of skill as established by the Supreme Court of India in the case of rummy, and the view of certain High Courts regarding the game of poker, and accordingly excluded games of skills (viz. rummy and poker) from the ambit of the prohibitory measures contemplated under the Act. The Order also set aside the entries in the Schedule to the Act which listed online games of rummy and poker as games of chance.

This decision of the Madras HC comes after more than three years of the Court initially observing the need for a regulatory framework to deal with emerging online games in the country (refer to our [ERGO](#)). The decision marks another triumph for India's thriving online gaming sector and realigns the State's online gaming policy with well-established principles which differentiate games of skill from games of chance.

Brief facts

The petitioners, including the All-India Gaming Federation and some other online gaming operators, challenged the constitutional validity of the Act which prohibited playing of any online games of chance with money or other stakes, including Rummy and Poker, in the state of Tamil Nadu. The Act defines online gambling as online wagering or betting and includes playing any online game of chance for money or other stakes, in any manner. Further, the Act provides that any online game specified in the Schedule to the Act shall be presumed to be an online game of chance. The online games listed in the Schedule included rummy and poker.

The Act was brought into force (refer to our [ERGO](#)) in the backdrop of the Tamil Nadu Gaming and Police Laws (Amendment) Act, 2021 (Amendment Act 2021) being declared as ultra vires to the Constitution of India by the Madras HC (refer to our [ERGO](#)) as it banned all forms of online games with stakes within the state of Tamil Nadu. Pursuant to the decision, the Tamil Nadu government constituted and sought recommendations of an expert committee on the possibility of introducing a new law to regulate online gambling within the State. Basis the committee's observations and recommendations, the Act was introduced by the Tamil Nadu government.

Judgment of Madras HC

Given the well-established position that rummy and poker are games of skill, the Madras HC placed the burden on the State to distinguish between a physical game of rummy or poker and an online game of rummy or poker, and how a game of rummy or poker does not remain a game of skill when played online.

The State attempted to substantiate the ban citing the role of artificial intelligence and bots in online games which could be used to manipulate the outcomes of such online versions of the games. The petitioners highlighted to the Court that adequate measures are deployed by the game operators, including undertaking information technology audits, ensuring the players follow the certain codes of conduct issued by the E-Gaming Federation, and procuring RNG certifications, to ensure that no artificial or external interferences are possible in the games. Given the lack of evidence, the Madras HC held that the inclusion of rummy and poker as games of chance in the Schedule of the Act is erroneous. The Court clarified that in the event a gaming operator is found to have indulged in an illegal activity, the State can initiate appropriate actions against such operator.

Further, the State highlighted its concerns regarding online games having an adverse impact on the mental and physical well-being of persons and children below the age of 18 years and the fact that 24 hours availability of such games endangers public and domestic health of the State. Accordingly, the State iterated that the Act was brought into effect pursuant to its power to legislate under *Entry 1* (public order) and *Entry 6* (public health, sanitation, hospitals, and dispensaries) of the State List of the Seventh Schedule of the Constitution of India. The Court acknowledged that while public health is certainly within the realm of the State Government, the Government must aim to implement pragmatic regulatory measures rather than imposing a blanket ban on all forms of online games. The State is well within its powers to control and regulate online games with reasonable measures including introducing limitations on playing duration, player's age, and monetary threshold.

Addressing the State's concern regarding maintenance of public order, the Court followed the established position that public order in the State List pertains to activities that would jeopardise or affect the public at large. In the present case, the Madras HC dismissed such concern citing that there is no evidence of public order being disturbed.

Considering the aforesaid arguments, the Madras HC partly upheld the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act, 2022 and directed that the provisions of the Act will be in force to regulate games of chance played for stakes in the State. Games of skills, including the games of rummy and poker, shall remain outside the purview of the Act. The State may choose to introduce separate reasonable regulations to govern and regulate some aspects of games of skills including the duration, monetary threshold, age limitations, and place other restrictions with regards to playing online games.

Comment

The Order marks a significant milestone for the online skill gaming industry and is hopefully the end of a long road in establishing the jurisprudence of online games of skills in the State of Tamil Nadu. The Madras HC emphasised that a blanket ban on games of skill, whether played online or offline, with stakes or otherwise is not reasonable and *ultra vires* to the Constitution of India. In this Order, the Madras HC has also reiterated the legitimacy of online gaming operators levying a predetermined service charge from its players so long as the operators do not claim a share in the profits of the players. This progressive Order by the Madras HC further legitimises and strengthens the online skill gaming sector and promises further growth for the industry.

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