

Gaming Law Wrap

August 20, 2015

MAHALAKSHMI CASE UPDATE: ONLINE RUMMY OPERATORS GET SOME RESPITE

For the last few years the case of *Mahalakshmi Cultural Association v. The Director, Inspector General of Police & Ors*¹ (“**Mahalakshmi Case**”), before the Supreme Court of India (“**SC**”), had been causing the brick and mortar clubs and online gaming businesses much anxiety. In a dramatic turn of events, over the last week the SC has delivered two orders, which give operators organising skill based games some respite. A brief background on this matter and the relevant consequences of the orders are discussed below.

BACKGROUND

The gambling laws in India are State specific. In most State enactments games of skill are excluded from the application of gambling laws. In the year 1968, the Supreme Court of India in *State of Andhra Pradesh v. Satyanarayan*² (“**Satyanarayana Case**”) held that Rummy (a 13 card game) was a game of skill and therefore gambling law should not apply. Following this order, various courts held that games of skill fell outside the purview of the gambling laws of the relevant States and therefore stakes could be taken or profit could be made from such games.

In 2012 a two judge bench of the Madras High Court, however, held that Rummy when played for stakes would amount to gambling (“**Impugned Order**”)³. The Impugned Order unsettled a rather settled position of law. A challenge was filed against the Impugned Order of the Madras High Court before the Supreme Court by Mahalakshmi Cultural Association (“**Association**”).

To give a brief background, the Inspector of Police, Chennai had raided the premises of the Association on the grounds that its premises was being used for gambling and that the members of the Association were playing Rummy with stakes in violation of the Chennai City Police Act. A case was accordingly registered against the Association. Aggrieved, the Association filed a writ petition before the Madras High Court seeking directions to forbear the police from, *inter alia*, interfering with the activities of the Association in any manner, including in relation to playing Rummy with or without stakes. The said writ petition was decided in favour of the Association by the single judge bench, on the grounds that rummy was a skill based game and hence the activities were not illegal. Certain directions were also issued to the police in this case. The court relied on the Satyanarayana Case to arrive at this conclusion.

The Inspector of Police, Chennai challenged this order before the two judge bench of Madras High Court. The two judge bench interpreted the Satyanarayana Case differently and held that in the event a club / association allowed its members or guests to play rummy with stakes or make any profit or gain out of such play, the police would have the authority to invoke the provision of Chennai City Police Act and penalize the Association.

During the course of the proceedings before the Supreme Court an application for intervention was filed by Games 24*7 and Play Games (“**Gaming Websites**”) to be impleaded in this matter. It was contended that their operations were being affected by the refusal of banks to process payments and to provide loans to the interveners. There was also the apprehension of criminal prosecution, since brick and mortar Rummy providers were being prosecuted.

Extensive submissions were made by the counsels for the Gaming Websites over the course of hearings conducted in 2014-15. Several issues were discussed before the Supreme Court regarding different kinds of business models adopted – for example, in the context of online gambling, if a fee was collected for services provided by the hosts of website, as opposed to a buy-in for a particular game, would it be considered as ‘stakes’? A brief synopsis of the arguments advanced over the last few hearing may be accessed here⁴.

It was contended that in *K. R. Lakshmanan v. State of Tamil Nadu*⁵, (“**Lakshmanan Case**”), the SC had held that horse racing was a game of skill and playing for stakes in a game of skill was not illegal. It was urged that the rationale followed in the Lakshmanan Case be applied in case of Rummy given that the Satyanarayana Case had held that Rummy was a game of skill. It was further contended that Rummy being a game of skill, even when played for money would not amount to gambling as the sole motivation was not money but the display of skill. The skill required to engage in the activity would not be eliminated by the addition of the monetary factor. There was a clear distinction in common law between games of skill and games of chance. Further, the jurisprudence reflected that there was a legal, judicial and executive policy to put games of skill in a different genus and specie from games of chance.

Some online operators who had made representations before the SC were asked to submit detailed affidavits explaining the structure of the games offered, the fees charged for playing such games, and the flow of profits in relation to the same. It was expected that the SC would lay down guidelines on what business models would constitute gambling as restricted / prohibited under the gambling legislations of various States (even when skilled games were played for a fee / stake).

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ORDER ON AUGUST 13, 2015

When a new bench of the SC heard the matter in August, 2015, it considered the petitions of the Gaming Websites in a simplistic manner. It observed that the Impugned Order did not deal with online Rummy. Further, the judges noted that the government had not taken any decision on whether online Rummy fell afoul of the law or not. Therefore, the SC was of the opinion that it was not necessary to entertain petitions of the Gaming Websites. The SC also observed that the Impugned Order had not dealt with online Rummy, therefore any observations made in the same may not necessarily relate to online Rummy. The SC at this juncture had not delivered its verdict on the issue of taking stakes and making profit in the context of Rummy in the offline context. The findings on these issues in the subsequent hearing and order would have had an impact on the manner in which the commercial arrangement between the players and online operators is structured.

ORDER ON AUGUST 19, 2015

This day however saw a twist in the tale. The counsel for the Association stated that a trial court had passed an order on October 11, 2014 which had acquitted the Association. The Association was being prosecuted before a trial court since its members were indulging in a game colloquially and locally called *Mangatha "ulle, velliye"* and were playing the game with stakes. The proceedings were not initiated for playing Rummy. In light of the acquittal, the counsel for the Association sought permission to withdraw the original writ petition filed before the Madras High Court and such permission was granted by the SC. The SC observed that since the original writ petition was dismissed as withdrawn, the observations made by the Madras High Court in the Impugned Order or the matter before the SC would not survive.

ANALYSIS: REASON TO REJOICE BUT MATTERS REMAIN GREY

After these twists, the matter which caused anxiety to the industry is finally put to rest. But the law still remains grey in terms of whether the State gambling enactments cover online gaming sites as well. Interestingly, the government made a statement before the SC that it is yet to decide on whether online Rummy fell foul of the law or not. Thus, the SC did not take upon itself to fill the lacuna in the policy and the law.

This also means that the position of law on taking stakes from games of skill reverts to the original position fortified by many court judgments: games of skill fall outside the purview of the State gambling laws and therefore stakes may be taken or profit may be made from such games.

However, online poker sites would still need to wait and watch the developments in the matter pending before the Delhi High Court in the *Gaussian Networks* case, where the question of whether games of skill can be offered for money on virtual platforms was considered. The petitioners in this matter had filed a petition under Order 36 of the Code and Civil Procedure Code before the Delhi District Court⁶ for seeking the opinion of the Hon'ble court on *inter alia* whether there was any restriction on taking stakes from games of skill on websites making profit. The Court opined that when skill based games are played for money in virtual space, the same would be illegal and observed that the degree of skill involved in games played in a physical form cannot be equated with those played online. The Court seems to have assumed that the degree of chance increased in online gambling; and there was a possibility of manipulation including randomness, cheating, and collusion in the online space. It was important to note that this judgment is binding only on the parties to the matter and that it has already been challenged before the Delhi High Court. The next hearing is scheduled to be in January 2016. It would be interesting to see how the arguments develop here.

With the advent of online gaming models, it is getting difficult for the businesses to have clarity of applicability of various laws both federal and State. Hence, the governments may look into these issues at a policy level.

– Mithun Verghis, Ranjana Adhikari & Gowree Gokhale
You can direct your queries or comments to the authors

¹ Special Leave to Appeal (C) No(s).15371/2012 (Arising out of impugned final judgment and order dated 22/03/2012 in WA No. 2287/2011 passed by the High Court of Madras)

² AIR 1968 SC 825

³ *The Director General of Police vs Mahalakshmi Cultural Association*, (2012) 3 Mad LJ 561

⁴ The Curious Case of the Indian Gaming Laws at Pg 16, accessible at http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/The_Curious_Case_of_the_Indian_Gaming_Laws.pdf

⁵ AIR 1996 SC 1153

⁶ *M/s Gaussian Networks Pvt Ltd. v. Monica Lakhnpal and State of NCT*, Suit No 32/2012, Delhi District Court

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