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Analysing developments impacting business

HAT-TRICK FOR ONLINE FANTASY SPORTS!

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INTRODUCTION

On the heels of the Punjab & Haryana High Court and the Bombay High Court verdicts, the Rajasthan High Court has vide its judgment in the case of Chandresh Sankla v State of Rajasthan & Others pronounced on 14 February 2020, upheld the legality of online fantasy sports gaming in India. It ruled that that such games are preponderantly a game of skill and therefore outside the ambit of gambling / betting legislations.

With the rapidly growing popularity of online fantasy sports in India, this judicial pronouncement comes as yet another shot in the arm for the online gaming industry, which recently saw India's first gaming Unicorn valuation.

Today, India's gaming industry is among the fastest growing industries. Driven by easy access to smartphones and high-speed data, online games like fantasy sports, poker, rummy, and other real money games are fast becoming popular. However, lately the industry has had to face the brunt of an increasing number of litigations, often filed by disgruntled users challenging the legality of online fantasy sports games and other games (including their online versions) played with real cash.

Games of chance such as three-card games, betting and lottery fall under the ambit of gambling and are generally not permitted to be played for stakes in most states of India. However, games of skill, whether played for money or money's worth, are typically excluded from the ambit of the gaming laws. While deciding whether a game involves skill or chance, courts in India have consistently adopted the 'predominance of skill' test.

BRIEF FACTS

A civil writ petition (Public Interest Litigation) was filed before the Rajasthan High Court by Chandresh Sankhla (Petitioner) against the State of Rajasthan (State) and the directors of Dream 11 seeking to stop the alleged illegal game of gambling and betting organized by Dream 11 and directing the state authorities to initiate criminal proceedings against the directors of Dream 11. The Petitioner stated that the online game is allegedly betting of cricket team and therefore amounted to gambling.

The State and the Home Secretary of the Government of Rajasthan (both also impleaded as respondents) countered by stating that the present petition is a frivolous one making frivolous and vague allegations against the state authorities. They further categorically stated that the Dream 11 game does not involve any commission of offence

of gambling and betting since the same is already a settled position of law as stated in the judgments of the Punjab & Haryana High Court (P&H Case) and the Bombay High Court (Bombay Case). Basis the judgements, the respondents pleaded that Dream 11 game involves "mere skill" and is exempted from the applicability of gambling legislations.

ANALYSIS AND DECISION BY RAJASTHAN HIGH COURT

The Division Bench ruled that the nature of the Dream11 game has already been examined by courts in India. The Court relied on the findings of both, the P&H Case and the Bombay Case, reiterating their findings that the result of a Dream 11 game was not dependent upon the real-world result of a match, i.e., upon a team winning or losing a match.

While dismissing the public interest litigation on account of no merits, the Court concluded that in view of the pronouncements in the P&H Case and the Bombay Case, the issue of treating the Dream 11 game as having any element of betting / gambling is no more res integra. Further, the Court also referred to the dismissal of special leave petitions filed against these cases in the Supreme Court of India.

COMMENT

The Rajasthan High Court reiterated that this issue has already been delved upon by courts and saw no plausible reason to take a contrary view. In our view, this judgment further solidifies the current legal position that online fantasy sports games do not amount to 'gambling' or 'betting' or 'wagering'; thereby opening the flood gates for numerous potential fantasy sports operators to enter the rapidly growing online fantasy sports gaming market in India.

This being said, it should be noted that the courts only examined the format of Dream11 and did not offer any views or analysis on the formats and offerings of other fantasy sports operators. With a plethora of players operating in the fantasy sports gaming market in India and with many novel and distinctive formats, it remains to be seen whether such formats would pass the "skill test". Additionally, the challenge that the industry faces is not only from the judiciary, but also from the state legislatures - which have used their 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, thus dealing a body blow to this sector.

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