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GAME, SET, MATCH: KARNATAKA HIGH COURT STRIKES DOWN ANTI GAMING LAW AS UNCONSTITUTIONAL

18 February 2022

Introduction

Agreeing with their colleagues of the Madras High Court, the judiciary in Karnataka has come to the rescue of the real money gaming sector – giving this industry some much needed impetus by striking down a recent state law that “banned” online games of skill played for cash. A division bench comprising Chief Justice Ritu Raj Awasthi and Justice Krishna S. Dixit, of the Karnataka High Court (Karnataka HC) vide its order issued on 14 February 2022 (Order), struck down certain provisions of the Karnataka Police (Amendment) Act, 2021 (Amendment Act) as *ultra vires* the Constitution of India (Constitution). The Amendment Act amended the Karnataka Police Act, 1963 (Act) to prohibit and criminalize all online games including ‘games of skill’.

The Amendment Act *inter alia* introduced expansive definitions of several terms including ‘gaming’, ‘wagering or betting’, ‘instruments of gaming’ etc. and sought to ban all games of skill offered through online platforms played with monetary stakes or otherwise. Following this Amendment Act, most gaming companies were forced to stop offering real money games in Karnataka.

The Karnataka HC *inter alia* observed that the legislative action which had clamped an absolute embargo on all ‘games of skill’ defies the principle of proportionality, is far excessive in nature and is therefore violative of Article 14 of the Constitution on the ground of ‘manifest arbitrariness’.

The Order is yet another win for the online gaming industry in India- one of the world’s fastest growing gaming markets, coming on the heels of similar orders being passed by the High Court of Kerala which quashed an amendment to the Kerala Gaming Act, 1960, which sought to ban online rummy in the State of Kerala; and the order of the High Court of Tamil Nadu which struck down the Tamil Nadu Gaming and Police Laws (Amendment) Act, 2021, which banned playing of games of skill on cyberspace.

Brief Facts

The Government of Karnataka (State) enacted the Amendment Act in October 2021 with the objective of including the use of internet and cyberspace for gaming / betting to curb the menace of online gaming and to enhance the punishment for gaming to wean citizens away from the vice of gambling.

The impugned Amendment Act sought to prohibit offering of online games of skill played for cash by bringing them within the ambit of ‘wagering and betting’. Certain penal provisions of the Act were amended, pursuant to which the penalties for violation

of the provisions of the Act were increased to a maximum imprisonment of three years and penalty up to INR 1 lakh. The overall impact therefore was that owners and providers of online gaming platforms (including those providing 'games of skill'), and players of online games (including 'games of skill') were made liable to such increased penalties under the Act.

A series of petitions were moved by private online gaming companies, certain individuals and the All India Gaming Federation, challenging the Amendment Act. The primary contentions of the petitioners were that (i) the Amendment Act was unconstitutional and manifestly arbitrary insofar as it sought to prohibit 'games of skill' which are protected under the fundamental right to carry on trade and business under the Constitution; and (ii) the Amendment Act failed to recognize the distinction between 'games of skill' and 'games of chance'.

The State primarily contended that Amendment Act was a social legislation seeking to prohibit activities injurious to public health. The State's main contention was that the Amendment Act seeks to put a stop to the deleterious effect of gambling.

Analysis and Decision by the Karnataka HC

The Karnataka HC reiterated the fact that 'games of skill' played even with monetary stakes are distinct from 'games of chance'. The division bench *inter alia* ruled that the State lacks the legislative competence under Entry 34 List II Schedule VII of the Constitution.

The Karnataka HC further observed that 'games of skill' have been judicially held to be business activities protected under Article 19(1)(g) of the Constitution. Accordingly, the Karnataka HC held that the relevant provisions of the Amendment Act are violative of (i) Article 19(1)(g) of the Constitution for banning 'games of skill'; and (ii) Article 14 of the Constitution for treating 'games of skill' and 'games of chance' similarly. The Karnataka HC also held that as the Amendment Act places an absolute embargo on 'games of skill' involving money or stakes, it defies the principle of proportionality, is too excessive in nature and is therefore violative of Article 14 of the Constitution on the ground of 'manifest arbitrariness'.

The Order also concurs with the recent orders of (i) the Madras High Court in *Junglee Games India Private Limited and Ors v. State of Tamil Nadu* (W.P.No.18022 of 2020) wherein it struck down the Tamil Nadu Gaming and Police Laws (Amendment) Act 2021 which criminalized wagering or betting in cyberspace, in its entirety for being ultra-vies the Constitution and for being beyond the scope of regulatory powers of the State; and (ii) the Kerala High Court in *Head Digital Works Private Limited v. State of Kerala* (W.P (C) No. 7785 of 2021) which quashed notification issued under the Kerala Gaming Act, 1960, imposing a ban on 'online rummy when played for stakes' for being ultra-vies the Constitution, as it treated a 'game of skill' equivalent to a 'game of chance'.

The Karnataka HC issued a writ of mandamus to the State restraining it from interfering with the online gaming businesses and related activities of gaming firms; and categorically clarified that only the specific offending provisions in the Amendment Act were being struck down and not the entire Amendment Act. Further, the Karnataka HC also stated that this Order will not stand in the way of the legislature bringing in a new law to deal with online gaming which is in consonance with the current constitutional position regarding gambling.

Comments

With the growing reach and penetration of the internet and the massive popularity of online gaming across India, the Order comes as a blessing and yet another triumph for

the online gaming industry, especially given that the State serves as a technological hub and a fielding ground for several new age / upcoming gaming platform operators.

While the online gaming industry has been on a steep growth curve, with a sizeable market share in the Indian media and entertainment sector, the key challenge for the industry has been differing state-level restrictions and absence of a uniform central policy governing online gaming in India. Given that the online gaming industry is set to play a crucial role in the evolving 'metaverse' and Web 3.0 ecosystem, it is imperative for the Government to formulate appropriate nuanced central framework for the online gaming space. While the Order has further solidified the legality of online gaming and games of skill in India, it will be interesting to see if the legislatures take note of this judgement and seize the opportunity to formulate regulations and policies that are more attuned to the online gaming businesses, and further aid the growth of the industry rather than act as an impediment.

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