

## **Why Madras HC Judgment is a Big Win for the Online Gaming Industry!**

The Tamil Nadu government's extreme stance on online gaming did not go down too well with the Madras High Court. In a brazen attempt to clamp down on online gaming and far more, the previous Tamil Nadu government had passed the Tamil Nadu Gaming and Police Laws (Amendment) Act of 2021<sup>1</sup> ("**The Act**"). Suddenly all online games involving stakes were banned in one go. It was a big jolt to all the players, game developers, organizers, investors, the self-regulatory body and a long list of major stakeholders of the gaming industry who were petrified at the idea of the game, the business and the entire industry being given a step-motherly treatment. Why so?

The government's rationale in the "Statement of Objects" of the Act alluding to suicides was dismissed by the court as merely anecdotal reference. Regarding addiction to gaming, the court said it's a subjective perception and there is no scientific justification that such a law is even needed. The court went onto remark that the legislation reeks to have borne out of "sense of morality" as no empirical studies have been put out. "*We welcome the forward-looking judgement*", Mr. Sameer Barde, the Chief Executive of Online rummy Federation said elatedly while echoing support for collaboration with the government.<sup>2</sup>

The Act had expanded the definition of "gaming" to include any game involving betting or wager, whether in person or in cyberspace. It completely prohibited organizing or facilitation of any form of betting regardless of it being a game of chance or skill. The games of skill, like online rummy and poker, which were earlier exempt as per Section 11 of Tamil Nadu Gaming Act, 1930 were now effectively banned if they involved money. Despite several judicial pronouncements clearly holding that game of skills are 'business activity' and therefore protected under Article 19(1)(g) of the Indian Constitution, the government has unfortunately ignored it, much to the dismay of gaming platforms and developers. The legislation had nullified the distinction between game of chance and game of skill with a sweeping ban and overturned the exemption previously granted under the same legislation.

Serious questions have been raised as to whether the state legislatures are even competent to pass such legislations. While Entry 34 of List II of 7<sup>th</sup> Schedule of the Indian constitution allows the state governments to frame laws on 'betting and gambling', 'gambling' has been

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<sup>1</sup> Tamil Nadu Gaming and Police Laws (Amendment) Act of 2021, Available at: [http://www.stationeryprinting.tn.gov.in/extraordinary/2021/63\\_Ex\\_IV\\_1\\_E.pdf](http://www.stationeryprinting.tn.gov.in/extraordinary/2021/63_Ex_IV_1_E.pdf)

<sup>2</sup> <https://www.livemint.com/companies/news/online-betting-firms-welcome-madras-hc-judgment-but-remain-wary-of-state-action-11628193682372.html>

judicially interpreted and confined to mean wagering or betting on games of chance. Time and again, the Supreme Court has reiterated that games of skill are different from games of chance. Back in 1956, in *R.M.D. Chamarbaugwalia v. Union of India*<sup>3</sup> and then forty years later in *K.R. Lakshmanan v. State of Tamil Nadu*<sup>4</sup>, the Supreme Court had held that Entry 34 cannot cover games of skill. Fast forward to 2021, as highlighted by the avoidable litigation to challenge ban on games like online rummy and poker in cases like *Junglee Games India Pvt. Ltd. v. State of Tamil Nadu*<sup>5</sup>, some state legislatures have shown scant regard for judicial pronouncements on online gaming and games of skill. The court said that players have a right to utilize their skills and make a living out of that. Only reasonable restrictions must be applied to achieve the object of the legislation.

The court held that a complete prohibition on games of skill would lead to “*ridiculous and unwarranted results if applied in letter and spirit*”. It also observed that the original law intended to prohibit only wagering or betting on games of chance. The state government could not justify why a law with lesser restrictions may not have sufficed and the court held the amendments to the legislation were unreasonable, disproportionate and ultra vires of the constitution and no part of it could be saved.

While responding to the specific issue of whether rummy and poker would be games of skill, the court observed that these games “*involve considerable memory, working out percentage, ability to follow cards on the table and constantly adjust to the changing possibilities of unseen cards*”, therefore they are games of skill, implying such games of skill should be out of the ambit of law regulating betting and gambling. It also noted that there is no difference between card games like rummy being played online or in person like board games scrabble or chess and the skills involved do not change if its played online or physically. Infact, the court went on to emphasize that 276<sup>th</sup> Report of the Law Commission lends credence that poker can be considered a game requiring skill.

As long as the outcome of a game is predominantly affected and controlled by skill more than chance, it would be a game of skill. It is time legislature takes a balanced approach to ensure games of skill are legally permissible and assure game developers and platforms, boosting the thriving online gaming industry in India.

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<sup>3</sup> *R.M.D. Chamarbaugwalia v. Union of India*, AIR 1957 SC 628

<sup>4</sup> *K.R. Lakshmanan v. State of Tamil Nadu*, 1996 2 SCC 226

<sup>5</sup> *Junglee Games India Pvt. Ltd. v. State of Tamil Nadu*, W.P. No.18022 of 2020