

The ‘Mahalakshmi’ Saga Unfolds

An update on the Supreme Court’s stand on the case of the Online Rummy Operators

By Ranjana Adhikari & Gowree Gokhale

While India is featured on the business maps of a number of International operators, the anxiety around the case of the online operators before the Supreme Court seeking clarity on the applicability of the state gambling laws to their business models had stopped many from executing their plans.

For the last few years, the entire gaming business community has been patiently watching the developments in the *Mahalakshmi Case*¹ before the Supreme Court of India (“SC”). The matter was essentially a challenge before the SC by Mahalakshmi Cultural Association (“Association”) to order of the Madras High Court (“Impugned Order”)² in relation to the game of Rummy being played in brick and mortar clubs. Since the online Rummy portals feel a slight brunt of this order, they had also approached the SC for clarity on the position of law vis-à-vis online gaming. In a dramatic turn of events in August 2015, the SC has delivered two orders, which gives the operators organising skill-based games some respite.

While on 13 August 2015, the SC observed that the Impugned Order has not dealt with online Rummy and therefore any observations made in the Impugned Order may not necessarily relate to online Rummy, on 19 August 2015, there was a unique twist in the tale where the Association withdrew the matter, thereby making



The Supreme Court of India

the original Impugned Order infructuous.

This article gives a detailed account of how matters unfolded in the Mahalakshmi case and what this recent order means to the business community.

The background to the Mahalakshmi Case

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 case of *State of Andhra Pradesh v. Satyanarayana*³ (“Satyanarayana Case”), the SC had held that Rummy (the 13 card game) was a game of skill.

The *Mahalakshmi Case* was essentially

an appeal filed against the Impugned Order of the Madras High Court before the Supreme Court by the Association. To give a brief background, the Inspector of Police, Chennai raided the premises of the Association on the grounds that the premise of the Association was being used for gambling and that the members were playing Rummy with stakes. A case was accordingly registered against the Association.

Aggrieved, the Association filed a Writ petition before a single judge for seeking directions to forbear the police from *inter alia* interfering with the activities of the Association in any manner, including playing 13 cards game of

Continued on next page

Continued from previous page

Rummy with or without stakes. The said writ petition was disposed of by the court in favor of the Association, on the grounds that Rummy is a skill based game and hence is not illegal. Certain directions were also issued to the police in this case.

It was this order of the single judge that had been challenged by the Appellants (Police) in the writ appeal before the division bench of the Madras High Court, where the court had interpreted the *Satyanarayana Case* slightly differently and held that in the event the club / association allows its members or guests to play Rummy with stakes or make any profit or gain out of such play, the police have the authority to invoke the provision of Chennai City Police Act.

The Impugned Order has unsettled a rather settled position of law. Various courts had previously held that games of skill fall outside the purview of the gambling laws and therefore stakes or profit can be made from such games. Different interpretations by different high courts gave rise to ambiguities on the position of law on collection of stakes from the game of Rummy.

During the course of the proceedings before the SC an application for intervention was filed by Games 24*7 and Play Games ("Rummy Websites") to be impleaded in this matter since their operations were being affected by the refusal of banks to process payments of the players on these sites. There was also the apprehension of criminal prosecution, since physical rummy providers were being prosecuted. Further, many states had exemptions for games of skill in their statutes but certain states like Orissa had no such exemption.

It was expected that the Supreme Court would lay down guidelines on what business models (including online) would constitute gambling as restricted / prohibited under the gambling legislations of various states (even when skilled games were played for a fee / stake).

Extensive submissions were made by

the counsels for the Rummy Websites over the course of hearings conducted in 2014-15. There have been many arguments and debates before the SC on the different kinds of business models adopted – for example, in the context of online gambling, if a fee is collected for the services provided by the hosts of the website, as opposed to a buy-in for a particular game, would the same be considered 'stakes'?

Some of the online operators who had made representations before the SC in this case, had been asked to submit detailed affidavits, explaining the structure of the games offered, the fees charged for such games to be played, and the flow of profits in relation to the same.

It was contended that previously⁴ 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 logic followed in the *Lakshmanan Case* should 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 is a clear distinction made in common law between games of skill and games of chance. Further, the jurisprudence reflects that there is a legal, judicial and executive policy to put games of skill in a different genus and specie from games of chance.

The Verdict

The SC on 13 August 2015 disposed of the petitions of the Rummy Websites stating that it found that the Impugned Order did not deal with online Rummy and that it applied specifically to Rummy played in the brick and mortar format only. Further, the judges noted that the States had not taken any decision on whether the provision of online Rummy would constitute gambling under the Chennai City Police Act. Therefore, the SC was of the opinion that it was not necessary to entertain this petition. The SC also mentioned that the observations in the Impugned order may not necessarily relate to online rummy. The SC at this juncture was yet to deliver its verdict on the issue of taking stakes from Rummy in the offline context.

The 19th August 2015 saw another twist in the tale. The counsel for the Association stated that the trial court had passed an order on 11th October 2014 by way of which the Association had been acquitted. Interestingly, the issue before the trial court brought by the prosecution was not based on the case of Rummy (or any other 13 card game) but for members indulging in a game colloquially and locally called *Mangatha "ulle, velliye"* by betting money for profit. The counsel for the Association sought permission to withdraw the original writ filed before the Madras High Court and such permission was granted by the SC with an observation that since the writ petition is dismissed as withdrawn, the observations made by the Madras High Court in the Impugned Order or the matter before the SC do not survive as the writ is infructuous.

¹ *Mahalakshmi Cultural Association v. The Director, Inspector General of Police & Ors*² 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)

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

⁴ AIR 1968 SC 825

⁵ *K. R. Lakshmanan v. State of Tamil Nadu*, 1996 AIR 1153 ("Lakshmanan Case")

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

Reason to rejoice but matters remain grey

The law continues to remain grey in terms of whether the state gambling enactments cover online gaming sites as well. The *Mahalakshmi Case* could have been the turning point where it was expected that the SC would lay down the law stating whether the state gaming enactments cover online models as well.

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 gambling laws of the relevant States and therefore stakes or profit may be made from such games.

One would also need to keep in mind the case of *Gaussian Networks*⁵ where the question of whether games of skill can be offered for money on virtual platforms was considered. The petitioners had filed a petition under Order 36 of the Code and Civil Procedure Code (“CPC”)

for seeking the opinion of the Honorable court on *inter alia* the question of whether there was any restriction on taking stakes from games of skill on websites making profit. The Court had 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 in games played in a physical form cannot be equated with those played online. It is important to note that this particular judgment is only binding on the parties to the matter and that it has already been challenged before the Delhi High Court.

Attorneys and others would need to now observe how the arguments would develop in this matter. However, on a close perusal of the order, the concerns raised by the court can be addressed by building adequate fraud control checks in the systems. This is a standard practice globally and also helps address anti-money laundering issues that plague these websites. ♣



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