

Indian Supreme Court Warming To Legalisation Of Online 'Skilled Games'

21 Aug, 2014

Martin John Williams, [GamblingCompliance](#)

An appeal before India's Supreme Court should lead to a national standard for rummy and other skilled games with stakes for both traditional and online outlets, a gaming law specialist says, with the court now focusing on whether and how companies should profit from the activity.

The landmark case, which started as a police raid on a Chennai club offering rummy with stakes, promises to introduce dependable if conservative parameters for online gaming companies and brick-and-mortar outlets, said Gowree Gokhale, a partner with law firm Nishith Desai Associates in Mumbai.

Based on the hearings in New Delhi to date, Gokhale expects the Supreme Court to affirm previous judgments legalising skilled games with stakes and the collection of "service fees" unrelated to stake volume.

"I think the Supreme Court is going to go ahead and give that confirmation. I don't see any issue on that," she told [GamblingCompliance](#) today. "On the service fee, again I don't see any issue because that is a settled position."

"It is only the profit-making element, or how the court perceives the percentage [of stakes] being charged by the online company" that is at issue, she said.

"The question now is whether the clubs can make profit in relation to that particular game which is played for stakes, and whether the Supreme Court will go ahead and say 'OK, you can have only X percent and not more than that', or give some other indication," she said.

However, it may take further legal action or new legislation for games such as poker to be defined as games of skill if the court does not address the scope of skilled gaming, Gokhale said.

If that happens, and if law enforcement agencies decline to interpret the verdict as applicable to poker, for example, Indian poker networks such as [Mirch Entertainment's Thrill Poker](#), Gaussian Networks' [Adda52](#), WYZ Games' [Pokabunga](#) and budding entrant [PokerStars](#) will have to **wait even longer** for affirmation of the legality of their operations.

With the court requiring clarity on online operations, it remains unclear when a verdict could be handed down. The next hearing is scheduled for September 16, but a judgment may not follow until the end of the year or even later.

In its latest hearing on August 13, the Supreme Court focused on online operations, and Gokhale said there was no evidence that the justices will discriminate between online and offline gaming activity.

"The Supreme Court may also be finding it difficult to make that distinction. It seems they want to go ahead and basically express how the online websites should operate," she said.

The case is on appeal from the Madras High Court, which ruled in March 2012 that rummy is a game of skill with a degree of chance, but that police may intervene if stakes are involved.

The appellant, Mahalakshmi Cultural Association, had been raided by Chennai police on suspicion of running a gambling establishment.

But the Madras judgment was inconsistent with high court orders in other states such as Andhra Pradesh and was stayed in part by the Supreme Court the following May.

The appeal was later joined by other groups, including online rummy companies Head Infotech and Play Games24x7, operators of the ace2three and RummyCircle websites, respectively.

The companies successfully argued that the Madras High Court order prompted banks to stop giving them loans and that payment gateway operators were refusing to deal with them and so should be allowed to join the appeal, Gokhale said.

With their inclusion, the case has become a national test case not only for gaming with stakes but also online gaming, on which Indian law remains silent.

"These websites may be taking about 10-15 percent from each 'table'. [Their counsel] are trying to equate that with the service fee that the [brick-and-mortar] clubs are charging, because that is something that the law has permitted," Gokhale said.

"The whole argument now that counsel is trying to argue — and to me that is the correct position — is that the moment you admit that a particular game is a game of skill, there is a clear provision under the law that says ... [anti-gambling] legislation should not apply at all," she said.

"If that is the position, then why do we even need to enter into the fact of whether a profit is being made or not made, and so on," she said.

But Gokhale warned that the Supreme Court is sensitive to public interest issues and emboldening small-scale gaming establishments on the back of any legal precedent.

"The difficulty that is being faced by the Supreme Court — obviously looking at the larger public interest — is that it is very wary of giving such a blanket statement such that if it is a game of skill then the profit-making element is possible, because in small shanties or some outlets, there is a possibility of mixed activities going on", including illegal activities.

"If the court gives protection to these outlets, it gets very difficult to control the illegal activities," she added. "The current bench also seems to be worried about that fact."

This could result in the Supreme Court "making law" in the public interest where there are gaps in relevant legislation, Gokhale said.

Although there are precedents for Supreme Court lawmaking in India, it "remains to be seen" if the court will be willing to do so in this case, such as through revenue percentage limits on stake volume, she said.

In the meantime, the Supreme Court verdict will override dissenting high courts in all states and union territories, but given that the current action is connected to Chennai police legislation, application of the verdict could still be limited in some states, she said.