

# India's Gaussian case and its impact on skill game portals

In 2012 Gaussian Network Pvt. Ltd., which operates a popular Indian gaming site, asked the Delhi District Court questions relating to online gaming portals. Gaussian argued that under every statute in relation to gaming, poker qualified as a game of skill, and that poker remained a game of skill whether it was played online or offline, though the District Court found otherwise. The matter eventually reached a hearing before the Delhi High Court, though recently, on 21 April 2016, Gaussian was granted permission to withdraw the reference both to the Delhi District Court and the High Court, meaning the observations of the District Court do not survive. Mithun Verghis, Ranjana Adhikari and Gowree Gokhale of Nishith Desai Associates review the case and the impact it will have on online skill game portals operating in India.

Since 2012, the online gaming industry has been on tenterhooks owing to two important matters before courts in India dealing with online rummy and online poker. During the last ten months both matters have been disposed of. Interestingly, in both matters there was no clear order from the courts in favour of online games but the industry seems to have benefited from the absence of adverse orders.

In India, gambling is a state subject i.e. each state can legislate its own laws. Therefore, each court order has to be viewed in the context of law applicable in the relevant state.

## Background to the Gaussian Network case

In 2012, Gaussian Network Pvt.

Ltd., the operator of a popular Indian gaming site Adda52.com ('Gaussian') and Monica Lakhanpal ('Investor') approached the Delhi District Court ('Delhi District Court') under the provisions of Order 36 of the Code and Civil Procedure Code ('CPC') of India, to seek its opinion with respect to various issues pertaining to online gaming portals (the 'Gaussian Network case')<sup>1</sup>. Two of the salient questions were:

- Whether there was any restriction on playing games of skill with stakes on profit making websites?
- Whether wagering and betting on games of skill made the activity 'gambling'?

The Delhi District Court opined that when skill based games were played for money online, it would be illegal. The Court observed that the degree of skill in games played in a physical form cannot be equated with those played online. The Delhi District Court may have assumed that the degree of chance increases in online gaming, and there is a possibility of manipulation including randomness, cheating, and collusion in the online space. The fact that such issues could be addressed by employing technology and effective fraud control checks put in place in the systems was not considered. The Delhi District Court also considered the order of the High Court of Madras ('Madras High Court') in the matter of *Director General of Police v. Mahalakshmi Cultural Association*<sup>2</sup> ('Mahalakshmi case') in which the playing of rummy for stakes in bricks-and-mortar rummy clubs was held to be illegal.

## Impact of the Delhi District Court order

The order of the District Court was binding only on the parties to

the petition. Thus, this opinion did not necessarily by itself alter the position of law in India. However, the authorities and other courts started taking the opinion of the Delhi District Court into account when dealing with decisions pertaining to gaming portals.

## Challenge to Delhi District Court order

In 2014 Gaussian filed a civil revision petition before the High Court of Delhi ('Delhi High Court') challenging the Delhi District Court's order. Gaussian reiterated its argument that under every statute in relation to gaming, poker qualified as a game of skill, and also that poker remained a game of skill whether it was played online or offline.

In the meantime, the appeal to the *Mahalakshmi* case was admitted in the Supreme Court of India<sup>3</sup> ('SC'), which is the highest court in India, and the decision of the Madras High Court was stayed. Various online rummy website operators intervened before the SC, as the Madras High Court order impacted their operations in India as well. Therefore, the hearing for the *Gaussian Networks* case was kept pending before the Delhi High Court, as the determination by the SC could have had an impact on the decision by the Delhi High Court.

In the *Mahalakshmi* case, the Supreme Court came tantalisingly close to settling the position regarding the legality of taking stakes on online rummy. However, in August 2015 the Government of Tamil Nadu made a statement before the SC that it had not taken any decision on whether online rummy fell foul of the law or not. Therefore, the SC did not make any comments on the legality of online rummy websites and their commercial models. The original matter in the Madras High Court

was withdrawn and all adverse observations in the entire matter with respect to the illegality of playing rummy for stakes were rendered ineffective<sup>4</sup>.

**Position in other states**

Pertinently, the High Courts of Karnataka and Calcutta had stated in various matters that in situations where poker is played as a game of skill, there was no objection to the games being organised and run by various individuals in the bricks-and-mortar format and they had prevented the local police from harassing individuals who conducted poker tournaments<sup>5</sup>. In another interesting turn of events, early in 2016 the State of Nagaland in India introduced the Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act 2015 ('Nagaland Act'), which allowed a licensing regime for the operation of skill based online gaming websites in India<sup>6</sup>. The licence under the Nagaland Act recognises games like rummy, poker and fantasy sports to be skill games and allows them to be offered on the portals of licensees.

**The unexpected twist at the last hearing**

The 21 April 2016 hearing before the Delhi High Court saw a very unexpected turn of events. The counsel appearing for Gaussian sought permission from the Delhi High Court to withdraw the revision petition. The counsel argued that under common law as well as established case law such as *R. M. D. Chamarbaugwalla v. Union of India*<sup>7</sup>, *State of Andhra Pradesh v. K. Satyanarayana & Ors*<sup>8</sup>, and *K R Lakshmanan v. State of Tamil Nadu*<sup>9</sup>, there was a clear exception provided for games of skill in India. In states like West Bengal, offering games like poker

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for stakes was permissible. The Nagaland Act also legitimised offering games of skill such as online poker and online rummy. The order of the Delhi District Court therefore would limit the rights of Gaussian even though it would be legal to offer such games under the Nagaland Act or in West Bengal.

The counsel for Gaussian requested that the approach followed by the SC while dismissing the *Mahalakshmi* case also be taken in the present scenario. As mentioned above, in the *Mahalakshmi* case, petitioners sought permission for the withdrawal of the original writ petition filed before the Madras High Court and permission for the same was granted by the SC. Consequentially, the proceedings before the SC became ineffective and the observations of the Madras High Court do not survive.

The Delhi High Court acceded to the request made by the parties and granted permission to withdraw the reference made before the Delhi District Court and the revision petition filed before the High Court. It also ordered that the observations of the District Court do not survive.

**Way forward**

While in most states prohibitions under gambling laws do not apply to skill games, some uncertainty was created due to the *Mahalakshmi* case and the *Gaussian Network* case with respect to online skill game portals, which has now been put to rest. It will be business as usual for the skill game portals. In some states gaming *per se* is prohibited. Therefore, the two court orders will not have any impact on the legal position in those states. Nagaland State has taken a progressive step to introduce a licensing regime for skill based gaming portals. Insofar

as poker is concerned, it seems that more and more states are now acknowledging it as a game of skill.

The law however continues to remain grey on the applicability of the prohibitions under state gambling enactments to online (non-skill) gaming sites.

With online gaming business models gaining momentum, more and more states are likely to review their position with respect to the online space. The conflict between Central laws and state laws will have to be resolved to ensure the growth of this industry.

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1. *M/s Gaussian Networks Pvt Ltd. v. Monica Lakhnpal and State of NCT*, Suit No 32/2012, Delhi District Court.
2. W.A.No.2287 of 2011.
3. *Mahalakshmi Cultural Association v. The Director, Inspector General of Police & Ors* SLP (C) No(s).15371/2012.
4. A detailed analysis of the proceedings in the *Mahalakshmi* case may be found at [http://www.nishithdesai.com/information/research-and-articles/nda-hotline/nda-hotline-single-view/article/mahalakshmi-case-update-online-rummy-operators-get-some-respite.html?no\\_cache=1&cHash=8c7a963cb096310edd4a35552557dad4](http://www.nishithdesai.com/information/research-and-articles/nda-hotline/nda-hotline-single-view/article/mahalakshmi-case-update-online-rummy-operators-get-some-respite.html?no_cache=1&cHash=8c7a963cb096310edd4a35552557dad4)
5. *Indian Poker Association v. State of Karnataka*, WP Nos. 39167 to 39169 of 2013 (Karnataka HC), *Kizhakke Naduvath Suresh v. State of West Bengal & Others* W. P. No. 13728 (W) OF 2015 (Calcutta HC).
6. Refer to our hotline on the Nagaland Act: [http://www.nishithdesai.com/information/research-and-articles/nda-hotline/nda-hotline-single-view/article/new-law-passed-in-the-state-of-nagaland-india-to-regulate-online-gaming.html?no\\_cache=1&cHash=718a88d1671944099971b8a1a53bf812](http://www.nishithdesai.com/information/research-and-articles/nda-hotline/nda-hotline-single-view/article/new-law-passed-in-the-state-of-nagaland-india-to-regulate-online-gaming.html?no_cache=1&cHash=718a88d1671944099971b8a1a53bf812)
7. AIR 1957 SC 628.
8. AIR 1968 SC 825.
9. (1996) 2 SCC 226.