THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE DR JUSTICE K. MANMADHA RAO

WRIT PETITON NO.19659 of 2020

WRIT PETITON NO.19571 of 2020

AND

WRIT PETITON NO.19732 of 2020

COMMON ORDER: *(Per the Hon'ble Sri Justice C. Praveen Kumar)*

The petitioners, engaged in business of developing and offering online games of skill in India, filed the above three writ petitions, seeking issuance of a Writ of *Mandamus* to declare the amendments to Section 2(1), 2(2), 2(4), 3(1), 3A, 4, 5, 6 and the complete substitution to Section 15 of the Andhra Pradesh Gaming Act, 1974 [*for short*, "the Act"] as unlawful, arbitrary and ultra vires of Articles 14, 19 (1)(g) and 21 of the Constitution of India.

2. Taking W.P.No.19732 of 2020 as a lead petition, the issues raised are answered hereunder:-

(i) The petitioner company which is engaged in business of developing and offering games of skill in India, is a registered company under the Companies Act. The petitioner company is engaged in business of designing, developing the software related games of skill, deploying and maintaining online website and mobile applications

based on games of skill for the Indian market through internet and website.

(ii) The petitioner developed the Online Rummy game in the year 2007 and allowed the public to play Rummy Online without any real cash. But, in the year 2009, the petitioner provided a platform for public to register themselves to play Online Rummy with real cash by way of buying online chips on its electronic platform and to participate in tournaments etc.

(iii) It is said that there is no fee to be paid by a player who registers on the Website/Mobile Apps of the Petitioner and registration only requires certain information like email address, age, and the State where player is playing from. The player is free to choose to compete in either free practice games and promotional tournaments or real money cash games and tournaments. Players who choose to compete in cash games use verified banking channels, such as Credit cards, Debit cards and Internet Banking to purchase game chips and can withdraw their winning, loosing only *via* Internet Banking channels to registered bank accounts or mobile wallets regulated by Reserve Bank of India [RBI].

(iv) In tournaments carrying cash prizes, which are partially or fully sponsored by the petitioner, winners get the prize money after

deducting applicable taxes and the service fee. Depending on the stake and size of the table, the petitioner charges only a service fee between 9% to 15% of the total amount collected from players and that there is no betting by the petitioner or third parties on the outcome of the Online Rummy games played or other skilled games between the Customers.

(v) Pursuant to an Ordinance issued on September 04th, 2020, the provisions of the Andhra Pradesh Gaming Act, 1974 came to be amended, which are challenged in the present writ petitions.

3. The averments in the affidavit filed, in support of the writ petition, show that conducting game of Online Rummy on its e-platform is said to be within the purview of the Act, as the game of Rummy is a "game of skill" and Online Rummy is no different from Physical Rummy except the fact that the game is played virtually. It is said that before the amendments were made, any game of skill wherever played, was exempted from the purview of the Act in view of Section 15 of the Act. However, by virtue of amendment to Section 15 of the Act, even playing a game of skill with stakes is gaming and attract the Penal provisions of the Act.

4. In other words, it is said that the amendments made is contrary to law laid down by the Hon'ble Supreme Court in "***State of Andhra***

Pradesh v. K. Satyanarayana and Ors[1]", "***Dr. K.R. Lakshmanan v. State of Tamil Nadu and Anr[2]"*** and the judgments of erstwhile High Court of Andhra Pradesh in ***"Executive Club v. State of Andhra Pradesh[3]"***, ***"Patamata Cultural and Recreation Society v. Commissioner of Police[4]"***, ***"Friends Cultural & Sports Society Club, Hyderabad & Ors v. Prl. Secretary Home Dept., Hyderabad &Ors[5]"*** and ***"G.V.R Family Club v. State of Andhra Pradesh[6]"***.

5. The averments in the affidavit also show that as the petitioner is carrying legally permitted business, the same is protected under Article 19(1)(g) of the Constitution of India, as such, the amendments made violate the Fundamental Right to carry on Business by the petitioner. It is also said that the amendments to the Act are violative of Article 14 of Constitution of India also. Further, the contents of the affidavit filed in support of the writ petition also show that the "games of skill" are not only protected under Article 19(1)(g) of the Constitution of India, but, in view of the judgment of Hon'ble Supreme Court in ***"RMD Chamarbaugwala v. Union of India[7]" (Chamarbaugwala- 2)*** the games dependent on exercise of skill can only be regulated and that they cannot be banned.

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[1]AIR 1968 SC 825
[2](1996) 2 SCC 226
[3]1998 (5) ALD 126
[4]2005 (1) ALD 772
[5]W.P.No. 30597 of 2015 and W.P.Nos. 22428 and 121 of 2015
[6]W.P. Nos. 24533,25043,25053,25395 and 25404 of 2011
[7]1957 SCR 930

6. A counter came to be filed by the respondents denying the averments made in the affidavit filed in support of the writ petition. It is averred that the object of the impugned amendment is to regulate virtual games involving betting and gambling or any game involving betting and gambling. The counter also states that as per the statistical data available, most of the people who are using various online platforms belong to those sections of the society, which are either unemployed or persons with limited means and there are several instances where several persons are resorting to acts of suicide or crimes to overcome the financial burden, after having lost beyond their means. In such unregulated and unmonitored circumstances, the State in its wisdom has taken a policy decision to impose a ban on betting and gambling in virtual and physical spaces by amending Sections 2, 3, 4, 5, 6, 7 & 15 of the A.P. Gaming Act, 1974.

7. Respondents also referred to the observation made by the Hon'ble High Court of Tamil Nadu (Madurai Bench) in ***"D. Siluvai Venance v. State[8]"***, wherein it was observed that *"Not only in the State of Tamil Nadu, but also in the entire Country, such online games, viz., Rummy Passion, Nazara, Leo Vegas, Spartan, Poker, Ace 2 Three, Poker Dabgal, Pocket 52, My11Circle, Genesis Casino, etc., are mushrooming and there are so many advertisements appearing in*

[8]2020 (3) MLJ (Crl) 710

almost all the social media and websites. It appears these advertisements are mostly targeting the unemployed youth, inducing them to play such games, on the pretext of earning money comfortably from their home."

8. It is further stated that Entry-34 of List-II read with Entry-1 of List-II of the Seventh Schedule of the Constitution which deal with betting and gambling, the State is empowered and has legislative competence to make laws either to prohibit betting or gambling or to regulate it, according to the socio-economic requirements of the State.

9. The Terms and Conditions of online games particularly Online Rummy, especially the procedure for obtaining information from the players is secretive and by no means transparent or reliable. Access to playing Online Rummy game for stakes can be automatically accessed by just entering the age, email address, State etc. and this mechanism cannot be verified whether the player is genuine or not.

10. Referring to amendments to Section 15 of the Act, it is stated that the Legislative intent in amending the Legislation is to exempt 'games of skill' from the provisions of the Act, if played for stake and third party bets and the prize winning are drawn from the stakes and third party bets. It was further averred that though the business activity of the petitioner constitutes a Fundamental Right under

Article 19 (1)(g) of the Constitution of India not amounting to *res extra commercium*, the State is empowered to prohibit the same in the interests of public order, over-riding the concerns of public interest and the objective sought to be achieved under the Directive Principles enshrined in Part-IV of the Constitution of India to promote the welfare of the people.

11. It was also averred that Online Game of Rummy with stakes or money cannot be construed as a game protected under Article 19 (1)(g) and petitioner is put to strict proof of the same.

12. The grounds in the additional counter filed by the respondents state that playing of Physical Rummy and Online Rummy is different and the element of chance is predominant in Online Rummy.

13. In reply to the counter filed, it is represented that there is no difference between Physical Rummy and Online Rummy played except playing it virtually, more particularly, while dealing with the cards. It is further stated that the cards are distributed using the certified Random Number Generator [RNG] software which is certified by globally reputed certification agency. The said software is audited and certified with high standard and integrity, making it tamperproof. Further, the players on operator platforms are required to comply with KYC processes, which include verification of e-mail address, mobile

number, address and photo with address proofs. Various safeguards taken are narrated in the rejoinder filed.

14. During the course of arguments, the petitioner has given up its challenge to Explanation (i) (e) to Section 2 (2) (a) of the impugned Act i.e. with regard to wagering or betting indirectly or by any third parties on the game of skill.

15. At later stage, I.A.No.1 of 2022 came to be filed by Advocate General, appearing for the Respondents, seeking permission of this Court to bring on record the *"Report of Committee to recommend the desirability of a legislation to ban Online Card Games including Rummy"*, basing on whose recommendations, the State of Tamil Nadu has issued an Ordinance. The same was opposed. This I.A.No.1 of 2022 has been dealt with separately.

16. Heard Sri Sajan Poovayya, Learned Senior Counsel and Sri C.V. Mohan Reddy, Learned Senior Counsel appearing for the petitioners, Sri S. Sriram, Learned Advocate General appearing for the State and Sri C. Sumon, Learned Special Government Pleader appearing for the State.

17. The issues, which fall, for consideration are:

(1) Whether the Rummy is a "game of skill" or a "game of chance?

(2) Whether the "game of skill" or business activity protected under Article 19(1)(g) of Constitution of India?

(3) Whether the "game of skill" or "game of chance" is distinct in nature?

(4) Whether the "game of skill" is beyond the purview of Entry-34 of List-II of Constitution of India, 1950?

(5) Whether the regulation of "games of skill", the legislative competence of the State in preventing the legislation?

18. Reiterating the averments made in the affidavit filed in support of the writ petition, both the learned Senior Counsel would submit that the petitioners are providers of online platform for people to play 'Rummy', which is a "game of skill" and protected under Article 19(1)(g) of the Constitution of India. The "game of skill" would not tantamount to gaming/gambling and as such classifying all games of skill including the game of Rummy as gaming/gambling is arbitrary. According to them, for any game to declare as a "game of skill" or "chance", the deciding factor is predominance of element of "skill" or "chance". It was also submitted that gambling construed to be something which does not depend to a substantial degree upon the exercise of skill, therefore when there is exercise of skill, it ought not to be considered as gambling. In Rummy, element of skill predominates chance, making Rummy a game of skill.

19. The learned Senior Counsel relied upon the judgments of Hon'ble Supreme Court in ***"State of Bombay v. R.M.D. Chamarbaugwala"***[9] ***(Chamarbaugwala-I)", "RMD Chamarbaugwala v. Union of India" (Chamarbaugwala-II)***, ***"K.R. Lakshmanan (Dr) v. State of Tamil Nadu"*** and "***State of Andhra Pradesh v. K. Satyanarayana and Ors".***

20. The very same judgments were also relied upon by the learned Senior Counsel to show that "games of skill" or business activities are protected under Article 19(1)(g) of the Constitution of India. The learned Senior Counsel also relied upon the judgment of Hon'ble Supreme Court in "***Thampanoor Ravi vs. Charupara Ravi***[10]***".***

21. In so far as regulating the "game of skill", learned Senior Counsel relied upon the judgment of High Court of Tamil Nadu (Madurai Bench) in ***"D. Siluvai Venance v. State"*** *[supra cited]*. The learned Senior Counsel also relied upon the Division Bench judgments of Madras High Court and Karnataka High Courts (wherein challenge came to be made to the amendments carried out to Karnataka Police Act, 1963 and the Tamil Nadu Gaming Act) to show that issue on hand is identical to the ratio laid down by Karnataka and Tamil Nadu High Courts.

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[9] 1957 SCR 874
[10] 1999 (8) SCC 74

22. Sri S. Sriram, learned Advocate General, appearing for the State and Sri C. Sumon, learned Special Government Pleader also appearing for the State, strenuously contend that the purport of the judgments relied upon by the learned Senior Counsel for the petitioners more particularly ***Chamarbaugwala- I and II*** cannot be made applicable to the case on hand. According to them, they dealt with respective enactments which provides for Prize Winning in a competition and in the context of the said Act. Referring to the judgment of ***K. Satyanarayana's*** case and more particularly Para 12 of the said judgment, it is urged that if there is evidence of gambling in some other way or that the owner of the house or the club is making a profit or gain from the game of rummy or any other game played for stakes, the offence can be brought home. According to them, in the absence of these elements, the amendments made are legal and valid.

23. Learned Advocate General would contend that in view of omission of Section 15 of the pre-amended Act, 1974 and the impugned amendment substituting Section 15 of the Act in a different manner, the Legislative policy is not to exempt "games of skill" from the provisions of the Act, if played with stakes and third party bets and the prize winning are drawn from the stakes and third party bets. In view of the impugned amendment, it is urged that there cannot be any absolute amendments for the petitioners to provide an online

platform to enable playing of games online for stakes and third party bets and the same is subjected to regulations under Article 19(6) of the Constitution of India. Learned Advocate General would contend that even if the business activity of the writ petitioners constitutes a fundamental right under Article 19(1)(g) of the Constitution of India not amounting to res-extra commercium, the State is empowered to prohibit the same in the interests of public order over-riding concerns of public interest and the objective sought to be achieved under the Directive Principles enshrined in Part-IV of the Constitution of India, to promote the welfare of the people. According to him, there is no other alternative measure by which such an activity can be regulated, for reasons elaborated in the pleadings. The justification for the impugned legislation on behalf of the State is to protect public order and in exercise of the Legislative powers of the State under Entry-34 of List-II read with Entry-1 of List-II of the Seventh Schedule of the Constitution and the power of the State to prohibit such activity even if not res-extra commercium is located in the power of the State for ensuring protection of Public Order as declared by the Hon'ble Supreme Court in ***M.J. Sivani and others vs. State of Karnataka and others***[11]***.***

[11] 1995 (6) SCC 289

24. The test to be adopted while adjudicating the reasonableness of the measure of total prohibition in relation to an activity and approach of the Court would be to balance the direct impact on the Fundamental Rights of citizens as against the public or social impress sought to be ensured. It is urged that implementation of Directive Principles contained in Part-IV of the Constitution of India is within the restriction, in the interest of general public, in view of the judgment of Hon'ble Supreme Court in ***State of Gujarat vs. Mirzapur Moti Kureshi Kassab[12].*** Referring to the language used in the Notification, it is urged that the language of the Notification is clear and plain and the meaning cannot be drawn, of a word, from the company it keeps.

25. Sri C. Sumon, learned Special Government Pleader would contend that the game of Online Rummy and game of Rummy played physically are totally different. According to him, a perusal of the manner in which Online Rummy is played would clearly indicate that the element of chance is predominant than element of skill. In other words, he would contend that the manner in which Online rummy is played would clearly show that the person at times would not be knowing with whom he is playing the game; the manner in which the cards are shuffled and disbursed, may at times create a doubt if 52

[12] 2005 (8) SCC 534

cards are there in the pack; only the last discarded card could be seen by the players as the other discarded cards would immediately get bundled with last discarded card on top of the dispatched cards; a limited time is given for a player to discard the card and if the card is not discarded within the time prescribed, the last card picked from the pack would automatically get discarded and having regard to the fact that the games are played from various places, there is every possibility of cards being discarded with some delay either due to power interruption or line interruption, in which event the last card picked from the pack even if it is useful to the player would get discarded. He also referred to various other aspects with regard to the manner in which it is played and ultimately contends that these are all factual issues which this Court cannot decide unless substantial material is received from an independent agency with regard to the manner in which this online game is played is available to the Court.

26. At this stage, learned Advocate General would also contend that having regard to the fact that the game is played online and is incapable of adequate regulatory steps to prevent abuse of the said opportunity by the writ petitioners, the impugned legislation contemplates complete prohibition of said activity which is permissible in the light of the judgment of Hon'ble Supreme Court in ***J.K. Bharati***

vs. State of Maharashtra and others[13]. Learned Advocate General further pleads that since gambling has not been held to be a trade under Article 19(1)(g) of the Constitution of India, the protection of the law laid down in ***Chamarbaugwala and Dr. K.R. Lakshmanan cases*** are not applicable to the petitioners. In view of all the circumstances stated above, learned Advocate General would submit that there are no merits in the writ petitions and the same have to be rejected.

27. In reply, the learned Senior Counsel for the petitioners would contend that the last few lines in the judgment of ***K. Satyanarayana*** are obiter dictum and the entire text of the judgment if read together coupled with the subsequent judgments would clearly show that game of rummy is a game of skill and it is not an offence even if played with stakes. That being so, any amendment brought would be contrary to the law laid down by the Hon'ble Supreme Court.

28. An additional affidavit came to be filed, more particularly, in the form of written arguments explaining the manner in which the game of online rummy is played, which we will refer to at an appropriate place.

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[13] 1984 (3) SCC 704

29. In order to appreciate the rival arguments, it would be just and proper for us to refer to the un-amended and amended Andhra Pradesh Gaming Act, 1974, which is as under:-

Sections	**Un-amended A.P. Gaming Act, 1974**	**Amended A.P. Gaming Act, 1974**
Sec:2 (2)	"gaming" means playing a game for winnings or prizes in money or otherwise and includes playing a game of mutka or satta, and lucky board and wagering or betting, except where such wagering or betting takes place upon a horse- race— (i) on the day on which the horse-race is to be run; (ii) in an enclosure which the stewards controlling the horse-race [or race meeting] have, with the sanction of the Government set apart for the purpose; and (iii) (a) with a licensed book maker; or (b) by means of a totalisator; but does not include a lottery; **Explanation**:- For the purpose of this clause-- (i) Wagering or betting shall be deemed to comprise the collection or soliciting of bets, the receipt or distribution of winnings or prizes in money or otherwise respect of any wager or bet, or any act which is intended to aid or facilitate wagering or betting or such collection, soliciting, receipt or distribution;	"gaming" means playing a game for winnings or prizes in money or otherwise and includes playing a game of mutka or satta **or playing online games for winning money or any other stakes**, and lucky board and wagering or betting, except where such wagering or betting takes place upon a horse- race— (i) on the day on which the horse-race is to be run; (ii) in an enclosure which the stewards controlling the horse-race [or race meeting] have, with the sanction of the Government set apart for the purpose; and (iii) (a) with a licensed book maker; or (b) by means of a totalisator; but does not include a lottery; **Explanation:-** For the purpose of this clause-(i) Wagering or betting shall includes,- (a). collection or soliciting of bets; (b). the receipt or distribution of winning or prizes in money or otherwise in respect of any wager or bet; (c). any act which is intended to aid, induce, solicit or facilitate wagering or betting or such collection, soliciting, receipt or distribution; (d). any act of risking money or playing stakes or otherwise on the result of a game or an event including on a game of skill. (e). any action specified in sub-clauses (a) to (d) carried out directly or indirectly by the players playing any game or by any third parties.
Sec: 2(4)	"instruments of gaming" includes cards, dice, gaming tables, or clothes, boards or any other article used or intended to be used as a subject or	"Instruments of gaming" includes cards, dice, gaming, tables, or cloths boards or any other article used for intended to be used physically or in

	means of gaming, any document used or intended to be used as a register or record or evidence of any gaming, the proceeds of any gaming and any winnings or prizes in money or otherwise, distributed or intended to be distributed in respect of any gaming.	any virtual or intangible mode including electronically as a subject or means of gaming, any document, electronic form or record, digital form or record used or intended to be used as a register or record or evidence of any gaming, the proceeds of any gaming which includes online electronic transfer of funds or transactions and any winnings or prizes in money or otherwise, distributed or intended to be distributed in respect of any gaming.
Sec:3	**Penalty for opening, etc., a common gaming house**– (1) Any person who opens, keeps or uses or permits to be used any common gaming house or conducts or assists in conducting the business of any common gaming house or advances or furnishes money for gaming therein, shall be punishable- (i) For the first offence, with imprisonment for a term which may extend to six months and with fine which may extend to one thousand rupees; but in the absence of special reasons to be recorded in writing, the punishment awarded under this clause shall be imprisonment for not less than one month and fine of not less than five hundred rupees; (ii) For every subsequent offence, with imprisonment for a term which may extend to one year and with fine which may extend to two thousand rupees; but in absence of special reasons to be recorded in writing the punishment awarded under this clause shall be – (a) For a second offence, imprisonment for not less than three months and fine of not less than one thousand rupees; (b) For a third or subsequent offence, imprisonment for not less than six months and fine of not less than one thousand rupees.	**Penalty for opening, etc., a common gaming house –**(1) Any person who opens, keeps, operates, uses or permits to be used any common gaming house or online gaming or conducts or assists in conducting the business of any common gaming house or advances or furnishes money for gaming therein, shall be punishable – (i) For the first offence, with imprisonment for a term which may extend to one (1) year and with fine which may extend to Rs.5,000/- (Rupees Five Thousand only); but in the absence of special reasons to be recorded in writing, the punishment awarded under this clause shall be imprisonment for not less thanthree (3) months and fine of not less than Rs. 3,000/- (Rupees Three Thousand only). (ii) For every subsequent offence, with imprisonment for a term which may extend to two (2) years and with fine which may extend to Rs.10,000/- (Rupees Ten Thousand only), but in absence of special reasons to be recorded in writing the punishment awarded under this clause shall be – (a) For a second offence, imprisonment for not less than six (6) months and fine of not less than Rs.5,000/- (Rupees Five Thousand only) (b) For a third or subsequent offence, imprisonment for not less than one (1) year and fine of not less than Rs.10,000/- (Rupees Ten Thousand only).

		3A.<u>Offences by companies</u> - Where a person committing a contravention of section or any other provisions of this Act is a every person who, at the time of the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as the company, its managing directors and other directors, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punishable accordingly: Provided that nothing contained in this section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge of that he exercised all due diligence to prevent such contravention.
Sec:4	**<u>Penalty for being found gaming in a common gaming house-</u>**Whoever is found gaming or present for the purpose of gaming, in a common gaming house shall, on conviction, be punishable with imprisonment for a term which may extend to one month or with fine which may extend to five hundred rupees, or with both.	**<u>Penalty for being found gaming in a common gaming house</u>**-Whoever is found gaming or present for the purpose of gaming, in a common gaming house shall, on conviction, be punishable with imprisonment for a term which may extend to six (6) months or with fine which may extend to Rs. 3,000/- (Rupees Three Thousand only) or with both.
Sec:5	**<u>Ower to grant warrant to enter a common gaming house, etc-</u>**(1) If any salaried judicial or executive magistrate, or any police officer not below the rank of an Assistant Commissioner of Police within the areas under the jurisdiction of the Commissioner of Police, Hyderabad and a Deputy Superintendent of Police elsewhere, has reason to believe that any place is used as a common gaming house, he may by his warrant give authority to any police officer not below the rank of a Sub Inspector,- (i) to enter with such assistance as may be found necessary at any time and by force, if necessary any such place; (ii) to arrest all persons found therein; (iii) to search all such persons and all parts of such place; and (iv) to seize-- (a) all moneys found with such	**<u>Offences are cognizable and non-bailable-</u>** (1) Every offence under this Act is cognizable and non-bailable. (2) Any Police Officer not below the rank of Sub-Inspector of Police has got authority :- (i) to enter any place and at any time with such force and with such assistance as may be found necessary; (ii) to arrest all persons found therein; (iii) to search all such persons and all parts of such place; and (iv) to seize- (a) all money found with such persons; (b) all instruments of gaming; and (c) all moneys, all securities for money and articles of value reasonably suspected to have been used or intended to be used for the purpose of gaming which are found in such place. (v) to freeze bank accounts which are used for the purpose of gaming.

	persons; (b) all instruments of gaming; and (c) all moneys, all securities for money and articles of value reasonably suspected to have been used or intended to be used for the purpose of gaming which are found in such place. (2) Any police officer having the power to issue a warrant under sub-section (1) may, instead of doing so, himself exercise all or any of the powers exercisable under such warrant.	
Sec:6	**Instruments of gaming found in a place entered or searched under Section 5 to be evidence that the place is a common gaming house**: Where any instruments of gaming are found in any place entered or searched under the provisions of Section 5, on or about the person found therein, it shall be presumed that such place is used as a common gaming house and that the persons found therein were present there for the purpose of gaming although no gaming was actually seen by the police officer or any of his assistants.	**Instrument of gaming found in a place entered or secured to be evidence that place is common gaming house**- Where any instrument of gaming or its facilities found in any place entered or searched, on or about person found therein, it shall be presumed that such place is used as a common gaming house and that the persons found therein were present there for the of gaming although no gaming was actually seen by police officer or any of his assistants.
Sec:7	**Provisions of Sections 4, 5 and 6 not to apply in certain cases**- Nothing in the Explanation of Section 4, or in Clause (ii) of sub-section (1) of Section 5 or in Section 6 shall apply to persons found in a premises or place belonging to or occupied by a club, society or other association of persons, whether incorporated or not, unless such persons are actually found gaming in such premises or place	**Provisions of sections 4 and 6 not to apply in certain cases** - Nothing in the Explanation to section 4 or in section 6 shall apply to persons found in a premise or place belonging to or occupied by a club, society, company or other association of persons, whether incorporated or not, unless such persons are actually found gaming or facilitating such gaming in any manner in such premises or place.
Sec:15	**Savings of games of skill**-Nothing in this Act shall apply to games of skill only wherever played.	**Overriding effect –** The Provisions of this Act, shall have the effect notwithstanding anything inconsistent therewith in any other law for the time being in force.

30. To establish as to whether a particular game is a “game of skill” or “game of chance”, the deciding factor would be, “what is predominant in the said game - skill or chance”. Dealing with the

Bombay Lotteries and Prize Competition Act, 1948, the Hon'ble Supreme Court in ***"State of Bombay v. R.M.D. Chamarbaugwala" (Chamarbaugwala- 1)*** *[supra cited]*, observed as under:

> "17. ...If *even a scintilla of skill was required for success the competition could not be regarded as of a gambling nature. The court of appeal in the judgment under appeal has shown how opinions have changed since the earlier decisions were given and it is not necessary for us to discuss the matter again. It will suffice to say that we agree with the court of appeal that a competition in order to avoid the stigma of gambling must depend to a substantial degree upon the exercise of skill. Therefore, a competition success wherein does not depend to a substantial degree upon the exercise of skill is now recognised to be of a gambling nature. From the above discussion it follows that according to the definition of prize competition given in the 1939 Act as in the 1948 Act as originally enacted, the five kinds of prize competition comprised in the first category and the competition in the third category were all of a gambling nature...."

31. Similarly, in ***RMD Chamarbaugwala v. Union of India (Chamarbaugwala-II)*** *[supra cited]* the Hon'ble Apex Court while dealing with the issue 'whether it was constitutionally permissible for Section 2(d) of the Prize Competitions Act, 1955, i.e., definition of 'prize competition', to take within its fold not only competitions in which success depends on chance but also those in which it would depend on a substantial degree of skill", observed as follows:

> *"6. If the question whether the Act applies also to prize competitions in which success depends to a substantial*

degree on skill is to be answered solely on a literal construction of Section 2 (d), it will be difficult to resist the contention of the petitioners that it does. The definition of "prize competition" in Section 2(d) is wide and unqualified in its terms. There is nothing in the wording of it, which limits it to competitions in which success does not depend to any substantial extent on skill but on chance."

"23. Applying these principles to the present Act, it will not be questioned that competitions in which success depends to a substantial extent on skill and competitions in which it does not so depend, form two distinct and separate categories. The difference between the two classes of competitions is as clear-cut as that between commercial and wagering contracts. On the facts, there might be difficulty in deciding whether a given competition falls within one category or not; but when its true character is determined, it must fall either under the one or the other. The distinction between the two classes of competitions has long been recognised in the legislative practice of both the United Kingdom and this country, and the courts have, time and again, pointed out the characteristic features which differentiate them. And if we are now to ask ourselves the question, would Parliament have enacted the law in question if it had known that it would fail as regards competitions involving skill, there can be no doubt, having regard to the history of the legislation, as to what our answer would be. Nor does the restriction of the impugned provisions to competitions of a gambling character affect either the texture or the colour of the Act; nor do the provisions require to be touched and re-written before they could be applied to them. They will squarely apply to them on their own terms and in their true spirit, and form a code complete in themselves with reference to the subject. The conclusion is therefore inescapable that the impugned provisions, assuming that they apply by virtue of the definition in Section 2(d) to all

kinds of competitions, are severable in their application to competitions in which success does not depend to any substantial extent on skill."

32. In ***"K.R. Lakshmanan (Dr) v. State of Tamil Nadu*** *[supra cited]*, Hon'ble Supreme Court observed as under:-

"3.The New Encyclopaedia Britannica defines gambling as "the betting or staking of something of value, with consciousness of risk and hope of gain on the outcome of a game, a contest, or an uncertain event the result of which may be determined by chance or accident or have an unexpected result by reason of the better's miscalculations". According to Black's Law Dictionary (6th Edn.) "Gambling involves, not only chance, but a hope of gaining something beyond the amount played. Gambling consists of consideration, an element of chance and a reward". Gambling in a nutshell is payment of a price for a chance to win a prize. Games may be of chance or of skill or of skill and chance combined. A game of chance is determined entirely or in part by lot or mere luck. The throw of the dice, the turning of the wheel, the shuffling of the cards, are all modes of chance. In these games the result is wholly uncertain and doubtful. No human mind knows or can know what it will be until the dice is thrown, the wheel stops its revolution or the dealer has dealt with the cards. A game of skill, on the other hand — although the element of chance necessarily cannot be entirely eliminated — is one in which success depends principally upon the superior knowledge, training, attention, experience and adroitness of the player. Golf, chess and even rummy are considered to be games of skill. The courts have reasoned that there are few games, if any, which consist purely of chance or skill, and as such a game of chance is one in which the element of chance predominates over the element of skill, and a game of skill is

one in which the element of skill predominates over the element of chance. It is the dominant element — 'skill' or 'chance' — which determines the character of the game."

33. In ***K. Satyanarayana's case*** *(supra cited)*, Hon'ble Supreme Court held that:

"2. We are also not satisfied that the protection of Section 14 is not available in this case. The game of rummy is not a game entirely of chance like the "three-card" game mentioned in the Madras case to which we were referred. The "three card" game which goes under different names such as "flush", "brag" etc. is a game of pure chance. Rummy, on the other hand, requires certain amount of skill because the fall of the cards has to be memorised and the building up of Rummy requires considerable skill in holding and discarding cards. We cannot, therefore, say that the game of rummy is a game of entire chance. It is mainly and preponderantly a game of skill. The chance in Rummy is of the same character as the chance in a deal at a game of bridge. In fact in all games in which cards are shuffled and dealt out, there is an element of chance, because the distribution of the cards is not according to any set pattern but is dependent upon how the cards find their place in the shuffled pack. From this alone it cannot be said that Rummy is a game of chance and there is no skill involved in it. Of course, if there is evidence of gambling in some other way or that the owner of the house or the club is making a profit or gain from the game of rummy or any other game played for stakes, the offence may be brought home. In this case, these elements are missing and therefore we think that the High Court was right in accepting the reference it did."

34. Following the ratio laid down in the judgments referred to above, the Combined High Court of Andhra Pradesh in ***Executive Club vs. State of Andhra Pradesh*** *[supra cited]* held as under:-

> *"16. It is thus obvious that the game of Rummy is not a game of mere chance; but a game which is preponderantly a game of skill. It may include an element of chance and it would nevertheless be a game of 'mere skill' within the meaning of Sec. 15 of A.P. Gaming Act, 1974. Thus, the applicability of 59 Secs. 3 and 4 of A.P. Gaming Act, 1974, is excluded insofar as it relates to the game of Rummy. Once it has to be held that the provisions of the Act are not applicable, whatever may be the stakes involved in playing such game would not be of any consequence."*

35. Similarly, such view was taken in "***Patamata Cultural and Recreation Society v. Commissioner of Police", "Friends Cultural & Sports Society Club, Hyderabad &Ors v. Prl. Secretary Home Dept., Hyderabad & Ors"*** and ***"G.V.R Family Club v. State of Andhra Pradesh"*** [*supra cited*].

36. Though, all these judgments were prior to amendment in question, it stands established that Rummy played physically is a "game of skill".

37. Learned Advocate General, as stated above, mainly contended that even if it is a "game of skill", but when stakes are involved, it would be an offence. On the other hand, the plea of the writ petitioners is that the business activity which requires skill are

protected under Article 19(1)(g) of the Constitution of India. In fact, the learned Advocate General mainly placed reliance on the last four lines of the judgment of the Hon'ble Supreme Court in ***K. Satyanarayana*** to show that when game of rummy is played for stake and when there is evidence of gambling or some other way or the club is making profit, the offence is brought home.

38. Dealing with the issue of business activity being protected under Article 19(1)(g) of the Constitution of India, if it is a "game of skill", the Constitution Bench of Hon'ble Supreme Court in ***RMD Chamarbaugwala-2*** observed that as regards competition which involve substantial skill, different considerations arise as they are business activities, the protection of which, is guaranteed by Article 19(1)(g) of the Constitution of India and the question would have to determined with reference to those competitions. Further, in Para 6, the Court held as under:-

> *"6. If the question whether the Act applies also to prize competitions in which success depends to a substantial degree on skill is to be answered solely on a literal construction of Section 2 (d), it will be difficult to resist the contention of the petitioners that it does. The definition of "prize competition" in Section 2(d) is wide and unqualified in its terms. There is nothing in the wording of it, which limits it to competitions in which success does not depend to any substantial extent on skill but on chance."*

39. From the above, it is very much clear that the "games of skill" and "games of chance" have distinct characteristics and further

observed that Parliament would fail if it sought to criminalize prize competitions involving games of skill. Accordingly, applying the *nomenjuris* i.e. gambling is limited to games of chance despite the text of the statute being broad enough to engulf games of skill.

40. In ***Chamarbaugwala-I,*** the Court in Para 26 of the said judgment made the following observations, in relation to Article 19(1)(g) of the Constitution of India.

> *"26. It will be noted that Article 19(1)(g) in very general terms guarantees to all citizens the right to carry on any occupation, trade or business and clause (6) of Article 19 protects legislation which may, in the interest of the general public, impose reasonable restrictions on the exercise of the right conferred by Article 19(1)(g). …The question which calls for our decision is as to the true meaning, import and scope of the freedom so guaranteed and declared by our Constitution."*
>
> *x xxxx*
>
> *"35. In short the argument is that Article 19(1)(g) and Article 301 guarantee and declare the freedom of all activities undertaken and carried on with a view to earning profit and the safeguard is provided in Article 19(6) and Articles 302-305. The proper approach to the task of construction of these provisions of our Constitution, it is urged, is to start with absolute freedom and then to permit the State to cut it down, if necessary, by restrictions which may even extend to total prohibition. On this argument it will follow that criminal activities undertaken and carried on with a view to earning profit will be protected as fundamental rights until they are restricted by law. Thus there will be a guaranteed right to carry on a business of hiring out goondas to commit assault or even murder, of housebreaking, of selling obscene pictures, of trafficking in women and so on until the law curbs or stops such activities. This appears to us to be completely unrealistic and*

incongruous. We have no doubt that there are certain activities which can under no circumstance be regarded as trade or business or commerce although the usual forms and instruments are employed therein. To exclude those activities from the meaning of those words is not to cut down their meaning at all but to say only that they are not within the true meaning of those words. Learned counsel has to concede that there can be no "trade" or "business" in crime but submits that this principle should not be extended and that in any event there is no reason to hold that gambling does not fall within the words "trade" or "business" or "commerce" as used in the Articles under consideration. The question arises whether our Constitution makers ever intended that gambling should be a fundamental right within the meaning of Article 19(1)(g) or within the protected freedom declared by Article 301."

41. Therefore, since the games of skill are protected as a legitimate business activity under Article 19(1)(g) of the Constitution of India, the right to make profit on such business activity are inherent and inseparable. Hence, making profit cannot be denied when the Constitution accord protection to carryout business activity. In other words, this protection under Article 19(1)(g) is given only to such of those games where element of skill predominant element of chance.

42. The learned Advocate General would contend that the findings of the Hon'ble Supreme Court and different High Courts, more particularly, the Combined High Court of Andhra Pradesh came to be made in the context of pre-amended Gaming Act, as applicable therein and that the playing online rummy was not in existence then. In view of the amendment, the situation, now, is totally different mainly on

two aspects (1) Playing game of rummy even if it is a game of skill with stakes is an offence and (2) Online Rummy is a game of chance [Element of chance is more than the element of skill]. To appreciate this argument, it would be necessary for us to refer to last four lines of the judgment in ***K. Satyanarayana,*** which is as under:-

> *"We cannot, therefore, say that the game of Rummy is a game of entire chance. It is mainly and preponderantly a game of skill. The chance in Rummy is of the same character as the chance in a deal at a game of bridge. In fact in all games in which cards are shuffled and dealt out, there is an element of chance, because the distribution of the I cards is not according to any set pattern but is dependent upon how the cards find their place in the shuffled pack. From this alone it cannot be said that Rummy is a game of chance and there is, no skill involved in it.* ***"Of course, if there is evidence of gambling in some other way or that the owner of the house or the club is making a profit or gain from the game of Rummy or any other game played for stakes, the offence may be brought home."***

43. Placing reliance on these lines learned Advocate General mainly contended that the game of skill even if played with stakes and when there is an element of profit making it would be an offence under the amended Gaming Act. As stated earlier, the plea of the respondents is that it is an Obiter dictum and in view of the principle of doctrine of *Stare Decisis*, the arguments have no legs to stand.

44. Before dealing with the same, it is to be noted that the judgment in ***K. Satyanarayana*** was rendered by the Bench of Two Judges while the subsequent judgment in ***K.R. Lakshmanan*** was by a bench of

Three Judges. In ***K.R. Lakshmanan*** case, the Hon'ble Supreme Court while holding that Horse racing is a game of skill, also held that Clubs have a right to make profit on horse racing if the betting is within the Club. Apart from that, the Constitution Bench in ***Chamarbaugwala-I and II*** has clearly laid down that a "game of skill" is protected under Article 19(1)(g) of the Constitution of India. Therefore, the argument of learned Senior Counsel for the petitioners that basing on the doctrine of *Stare Decisis,* ratio in ***K.R. Lakshmanan*** case has to be extended to other games of skill cannot be brushed aside.

45. Further, a reading of last four lines of judgment of ***K. Satyanarayana*** case, would show that *"if there is evidence of gambling in some other way or that the owner of the house or the club is making a profit or gain from the game of Rummy or any other game played for stakes, the offence may be brought home".* Meaning thereby that a third person or a club or a house owner is making profit on Rummy played for stakes or any other game played on stakes would be an offence. Therefore, the last four lines would indicate gambling in some other way on the game of Rummy played for stakes is bad and illegal. Therefore, the shelter taken by the State on the last four lines of ***K. Satyanarayana*** case in our view may not be much help unless

online Rummy is not a "game of skill" or Online Rummy has predominance of "game of chance".

As to the Legislative competence and wider interpretation of Legislative entries; Scope of Entry-34 in State List - Games of Skill vs. Games of Chance:

46. 'Betting' and 'Gambling' are not defined in our Constitution. The main ground cannoned is that the subject amendment could not have been enacted for want of legislative power. Entry-34 of State List employs the term 'Betting and Gambling. It is established law that legislative power emanates from Articles 245, 246 and 246-A of the Constitution and that the Legislative Entries are the fields of law making. The Legislative Entries, in whichever list they are, should be interpreted with widest amplitude. The purpose of the enumeration of the legislative power is not to define or delimit the description of law that the Parliament or the State Legislation may enact the respect of any of the subjects assigned to them. The enumeration is made to name a subject for the purpose of arranging to that power. The Division Bench of Karnataka High Court in ***All India Gaming Federation vs. State of Karnataka***[14]**,** held as under:-

> "*(d) When a word or an expression acquires a special connotation in law, it can be safely assumed that the legislature has used such word*

[14] W.P. No.18703 of 2021 Judgment dated 14th February 2022:: 2022 SCC OnLineKar 435

or expression in its legal sense as distinguished from its common parlance or the dictionary meaning. These legal concepts employed in a Constitution if construed by the Courts as such, acquire the constitutional spirit. Further when such terms are construed by the Apex Court to mean a particular thing, other Courts cannot venture to interpret the same to mean something else. What we are construing is a constitutional concept, i.e., 'Betting & gambling' and not just two English words. Learned Advocate General's argument of 'widest amplitude' therefore cannot stretch the contours of a constitutional concept like this to the point of diluting its identity. Gambling, betting and other associated concepts are not of recent origin. They have been there in American and English realm of laws since centuries as mentioned in CHAMARBAUGWALLA-1 itself. We are not required to start afresh every time we want to examine the operation of some terms employed in the Constitution, even if it transpires that these terms do need a revised construction; we have a basis from which we can start our critique.

47. **Scope of Entry-34 in State List:-** The two words Betting and Gambling as employed in Entry-34, List-II have to read conjointly to mean only betting or gambling activities, that fall within the legitimate competence of the State. Agreeing with the view expressed by the Division Bench of Karnataka High Court, the word "betting" employed therein takes its colours from the companion word "gambling". Therefore, betting referred to therein relates to gambling as distinguished from betting that does not depend on skill that can be regulated by the State Legislative. The same gets support from ***Chamarbaugwala-I & II, K. Satyanarayana & K.R. Lakshmanan,*** which is as under:-

"(i) In ***CHAMARBAUGWALA-I,*** *supra the Apex Court inter alia was considering whether the Bombay Lotteries and Prize Competition Act, 1948, is a legislation relatable to Entry 34, List II, i.e., "Betting and gambling". To answer this question, the definition of "prize competition" in the said legislation was examined with all its constituents & variants such as "gambling prize competition", "gambling adventure", "gambling nature" & "gambling competition". After undertaking this exercise, the Court observed:*

"...On the language used in the definition section of the 1939 Act as well as in the 1948 Act, as originally enacted, there could be no doubt that each of the five kinds of prize competitions included in the first category to each of which the qualifying clause applied was of a gambling nature. Nor has it been questioned that the third category, which comprised " any other competition success in which does not depend to a substantial degree upon the exercise of skill", constituted a gambling competition. At one time the notion was that in order to be branded as gambling the competition must be one success in which depended entirely on chance. If even a scintilla of skill was required for success the competition could not be regarded as of a gambling nature. The Court of Appeal in the judgment under appeal has shown how opinions have changed since the earlier decisions were given and it is not necessary for us to discuss the matter again. It will suffice to say that we agree with the Court of Appeal that a competition in order to avoid the stigma of gambling must depend to a substantial degree upon the exercise of skill. Therefore, a competition success wherein does not depend to a substantial degree upon the exercise of skill is now recognized to be of a gambling nature."

What emerges from the above observations is that: gambling is something that does not depend to a substantial degree upon the exercise of skill, and therefore something which does depend, ought not to be considered as gambling; as a logical conclusion, a game that involves a substantial amount of skill is not a gambling.

(ii) In ***R.M.D.CHAMARBAUGWALA-II****, supra the Court was treating the question, whether it was constitutionally permissible for section 2(d) of the Prize Competition Act, 1955, which defined "Prize Competition" to take within its embrace not only the competitions in which success depended on chance but also those wherein success depended to a substantial extent on the skill of player. What is observed in CHAMARBAUGWALA-I becomes further clear by the following observations in this case:*

"... If the question whether the Act applies also to prize competitions in which success depends to a substantial degree on skill is to be answered solely on a literal construction of s.2 (d), it will be difficult to resist the contention of the petitioners that it does. The definition of 'prize competition' in s. 2(d) is wide and unqualified in its terms. There is nothing in the working of it, which limits it to competitions in which success does not depend to any substantial extent on skill but on chance...that competitions in which success depends to a substantial extent on skill and competitions in which it does not so depend, form two distinct and separate categories ... The distinction between the two classes of competitions has long been recognised in the legislative practice of both the United Kingdom and this country, and the Courts have, time and again, pointed out the characteristic features which differentiate them. And if we are now to ask ourselves the question, would Parliament have enacted the law in question if it had known that it would fail as regards competitions involving skill, there can be no doubt, having regard to the history of the legislation, as to what our answer would be ... The conclusion is therefore inescapable that the impugned provisions, assuming that they apply by virtue of the definition in s. 2(d) to all kinds of competitions, are severable in their applications to competitions in which success does not depend to any substantial extent on skill..."

(iii) In ***K. SATYANARAYANA,*** *the Apex Court was examining as to whether the rummy was a game of chance or a game of skill. Strangely, CHAMARBAUGWALAS I & II do not find a reference in this decision; however, what the Court observed being consistent with the*

said decisions and the following observations are profitably reproduced:

"12. … The game of rummy is not a game entirely of chance like the "three-card" game mentioned in the Madras case to which we were referred. The "three card game which goes under different names such as "flush", "brag" etc. Is a game of pure chance. Rummy, on the other hand, requires certain amount of skill because the fall of the cards has to be memorised and the building up of Rummy requires considerable skill in holding and discarding cards. WE cannot, therefore, say that the game of rummy is a game of entire chance. It is mainly and preponderantly a game of skill. The chance in Rummy is of the same character as the chance in a deal at a game of bridge. In fact in all games in which cards are shuffled and dealt out, there is an element of chance, because the distribution of the card is not according to any set pattern but is dependent upon how the cards find their place in the shuffled pack. From this alone it cannot be said that Rummy is a game of chance and there is no skill involved in it…"

(iv) In ***K.R. Lakshmanan****, a Three Judge Bench of the Apex Court was examining the vires of amendments to the Madras City Police Act, 1888 and the Madras Gaming Act, 1940 whereby the exception carved out for wagering on horse-racing from the definition of "gaming" was deleted, much like the effect of the Amendment Act herein which inter alia widens the definition of "gaming" to include "wagering on games of skill", that hitherto enjoyed constitutional protection. Having considered CHAMARBAUGWALAS-I & II, K.SATYANARAYANA and some notable decisions of foreign jurisdictions, the Court succinctly stated the difference between a game of chance and a game of skill, as under:*

"33. The expression `gaming' in the two Acts has to be interpreted in the light of the law laid-down by this Court in the two Chamarbaugwala cases, wherein it has been authoritatively held that a competition which substantially depends on skill is not gambling. Gaming is the act or practice of gambling on a game of chance. It is

staking on chance where chance is the controlling factor. `Gaming' in the two Acts would, therefore, mean wagering or betting on games of chance. It would not include games of skill like horse-racing. … We, therefore, hold that wagering or betting on horse-racing - a game of skill - does not come within the definition of `gaming' under the two Acts. 34… Even if there is wagering or betting with the Club it is on a game of mere skill and as such it would not be 'gaming' under the two Acts."

48. From the above, it stands establishes that a "game of chance" and "game of skill" are two distinct concepts of legal significance. Whether the game, is a "game of chance" or "game of skill", has to be judged by applying predominance test. In a game where skill dominates, it cannot be a game of chance and in a game where element of chance dominates it cannot be a game of skill. When a game does not involve substantial amount of skill, is a game of chance, and as such falls within the scope of Entry-34 of State List.

49. Learned Senior Counsel, appearing for the petitioners also submit that amended Act is violative under Article 14 of the Constitution of India, as the said amendment does not recommend the difference between "games of skill" vs. "games of chance". Relying upon the judgment of Hon'ble Supreme Court in ***E.P. Royappa vs State of Tamil Nadu and another***[15]**,** the learned Senior Counsel would contend that the Indian Constitution does not permit things which are different, in fact on opinion to be treated in law as same.

[15] AIR 1974 SC 555

50. Even, the two recent judgments of Karnataka High Court and Tamil Nadu High Court have not dealt with the manner in which Online is played. But, the question again would be ***whether Online Rummy is a "game of skill" or "game of chance"?***

51. Learned Advocate General would contend that instances of crime occurring in the State of Andhra Pradesh, the details of which are enclosed, made the State to amend the Andhra Pradesh Gaming Act so as to protect public order. In other words, according to him, the public order can form a legitimate basis for imposing prohibition in exercise of legislative power of the State under Entry-34 List-II read with Entry-I List-II of Seventh Schedule of the Constitution. He placed reliance of ***M.J. Sivani and others vs. State of Karnataka*** *[supra cited]* and also the judgment in ***State of Gujarat vs. Mirzapur Moti Kureshi Kassab*** *[supra cited]* to contend that implementation of Directive Principles is within the expression of restrictions in the interest of the general public.

52. The same is opposed by the learned Senior Counsel for the petitioners by placing reliance on the judgment of Hon'ble apex Court **in *Chintaman Rao vs. State of M.P.*[16].**

[16] 1950 SCR 759

53 The Hon'ble apex Court in the above case, after referring to other judgments observed as under:-

> *"6. The phrase "reasonable restriction" connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word "reasonable" implies intelligent care and deliberation, that is, the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by clause (6) of Article 19, it must be held to be wanting in that quality."*
>
> ***Shri Cooverjee B. Bharucha v. Excise Commissioner and The Chief Commissioner, 1954 SCR 873***
>
> *"7. Article 19(1)(g) of the Constitution guarantees that all citizens have the right to practices any profession or to carry on any occupation or trade or business, and clause (6) of the article authorises legislation which imposes reasonable restrictions on this right in the interests of the general public. It was not disputed that in order to determine the reasonableness of the restriction regard must be had to the nature of the business and the conditions prevailing in that trade. It is obvious that these factors must differ from trade to trade and no hard and fast rules concerning all trades can be laid down. It can also not be denied that the State has the power to prohibit trades which are illegal or immoral or injurious to the health and welfare of the public. Laws prohibiting trades in noxious or dangerous goods or trafficking in women cannot be held to be illegal as enacting a prohibition and not a mere regulation.*
>
> *The nature of the business is, therefore, an important element in deciding the reasonableness of the restrictions. The right of every citizen to pursue any lawful trade or business is obviously subject to such reasonable conditions as may be deemed by the governing*

authority of the country essential to the safety, health, peace, order and morals of the community. Some occupations by the noise made in their pursuit, some by the odours they engender, and some by the dangers accompanying them, require regulations as to the locality in which they may be conducted. Some, by the dangerous character of the articles used, manufactured or sold, require also special qualifications in the parties permitted to use, manufacture or sell them. These propositions were not disputed, but it was urged that there was something wrong in principle and objectionable in similar restrictions being applied to the business of selling by retail, in small quantities, spirituous and intoxicating liquors."

Superintendent, Central Prison, Fatehgarh v. Dr. Ram Manohar Lohia,1960 Cri LJ 1002

"17. The wide reach of this principle appears to have been circumscribed to some extent in a later decision of this Court in R.M.D. Chamarbaugwalla v. Union of India . In that case the constitutionality of Sections 4 and 5 of the Prize Competitions Act (42 of 1955) was challenged on the ground that "prize competition" as defined in Section 2(d) of the Act included not merely competitions that were of a gambling nature but also those in which success depended to a substantial degree on skill. This Court, having regard to the history of the legislation, the declared object thereof and the wording of the statute, came to the conclusion that the competitions which were sought to be controlled and regulated by the Act were only those competitions in which success did not depend to any substantial degree on skill. That conclusion was sufficient to reject the contention raised in that case; but even on the assumption that 'prize competition' as defined in Section 2(d) of the Act included those in which success depended to a substantial degree on skill as well as those in which it did not so depend, this Court elaborately considered the doctrine of severability and laid down as many as seven rules of construction.

On the application of the said rules, it was held that the impugned provisions were severable in their application to competitions in which success did not depend to any substantial degree on skill.

18. The foregoing discussion yields the following results: (1) "Public order" is synonymous with public safety and tranquillity: it is the absence of disorder involving breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife, war, affecting the security of the State; (2) there must be proximate and reasonable nexus between the speech and the public order; (3) Section 3, as it now stands, does not establish in most of the cases comprehended by it any such nexus; (4) there is a conflict of decision on the question of severability in the context of an offending provision the language whereof is wide enough to cover restrictions both within and without the limits of constitutionally permissible legislation; one view is that it cannot be split up if there is possibility of its being applied for purposes not sanctioned by the Constitution and the other view is that such a provision is valid if it is severable in its application to an object which is clearly demarcated from other object or objects falling outside the limits of constitutionally permissible legislation; and (5) the provisions of the section are so inextricably mixed up that it is not possible to apply the doctrine of severability so as to enable us to affirm the validity of a part of it and reject the rest."

54. From the judgments referred to above, it is clear that prohibition, if any, in relation to Trade and Commerce can be imposed for maintaining public order, if the same is illegal or immoral or injuries to health and welfare of the public, apart from the nature of business permissible under law and if it is not a "game of skill". But, the learned Advocate General referred to certain crimes registered in the State to show that the act of the State in imposing prohibition on

Online Rummy has been done to protect citizens from playing the game and losing money.

55. A perusal of the crimes registered in the State show that though couple of cases came to be registered for offences punishable under Section 306 of Indian Penal Code, 1860 [Suicide], but other cases do not anywhere show that the deceased therein were forced to commit suicide because of loosing substantial amount and property by playing Online rummy or borrowing money for playing Online Rummy. Therefore, this stand taken by learned Advocate General in our view cannot be accepted.

56. All the findings given above, in our view are acceptable, if the game of Rummy/Online Rummy is a "game of skill" or where skill is predominant. Though, there is enough material in the form of judgments to show that Rummy played physically is a "game of skill" but no material except the petition and reply averments made by both sides along with screenshots to show that Online Rummy is also a "game of skill"/or "game of chance".

57. Both the learned Senior Counsel appearing for the petitioners relied upon the judgments in ***K.R. Lakshmanan*** and ***K. Satyanarayana,*** but all those judgments came to be delivered when there was no Online Rummy, and as such, the judgments relied

upon by the learned Senior Counsel in our view may not be of much help except the two judgments of Madras and Karnataka High Courts delivered recently. Even the judgment delivered by the Hon'ble Karnataka High Court, is silent as to how the game of Online Rummy is played except stating that there is no difference between Online Rummy and Physical Rummy. In so far as the judgment delivered by the Hon'ble Madras High Court is concerned, it is to be noted that subsequent to the judgment, the Government appointed a Committee headed by Justice K. Chandru (Chairperson) to submit a report showing as to the manner in which the game is played and also as to whether it is a "game of chance" or "game of skill". Though, the report submitted by Justice K. Chandru, to the State of Tamil Nadu, is filed before this Court along with an Interlocutory Application, but, the same was opposed by raising technical grounds, which we have dealt with separately. Therefore, as stated by us earlier, except the averments made in the affidavit filed in support of the writ petitions by the petitioners and the counter affidavit filed by the respondents, coupled with the screenshots denying the petition averments, there is no material disclosing the manner in which the game of Rummy is played. As stated earlier, Sri C. Sumon, learned Special Government Pleader would contend that in view of the judgment of Hon'ble Supreme Court in ***K.R. Lakshmanan*** a "game of skill" although eliminates the element of chance, is one in which success depends

particularly upon superior knowledge, training, attention, experience and adroitness of the player. Therefore, when there is no legal evidence available on record to show the manner in which the Online Rummy is played, unlike Physical Rummy, it is difficult to hold that Online Rummy satisfies the above requirement.

58. Sri C.V. Mohan Reddy, learned Senior Counsel appearing for Petitioners argued that the game of 'Rummy' is considered as a 'game of skill' and online rummy is no different from playing physical rummy other than the fact that the game is considered and played virtually. In order to demonstrate that Online Rummy is same/similar to playing physical rummy, he submitted step- by -step procedure of how Online Rummy is Played. The said procedure is extracted here under:

> a. *"Player registers on the website with a unique username, email and password;*
>
> b. *The age of playing Online Rummy is 18 years and above;*
>
> c. *The player can play free rummy games after registering on the website;*
>
> d. *If a player wants to play games with stakes, he/she has to add money to his user account which can be done only by using legally acceptable online payment mediums including net-banking, credit cards, debit cards or other online prepaid instruments (i.e., mobile wallets such as Paytm etc.);*
>
> e. *With the money that the player has in his/her user account, the player can choose the game that he/she wishes to play from a list of games displayed on the platform;*

f. Every game has a 'JOIN' button associated with it and a player can join the virtual game table by clicking on this button;

g. Once a player joins a game table, entry fee specified for that game is held as 'in-play' and deducted from their user account at the end of the game;

*h. The game starts when at least two players are seated at the virtual game table. Cards are dealt randomly by a Random Number Generator Software (hereinafter referred to as **'RNG'**) that is certified by an independent globally renowned IT audit agency (I-tech labs, Australia). This ensures that there is no bias or tampering in the way cards are assigned to users. Furthermore, the players play the game as per the standard rules of rummy as published on the Platformof the Petitioner, which are akin to the rules of rummy played in any form whatsoever; and*

i. At the end of the game, the winner gets the entire winning amount minus the predetermined service charge/platform fee which is deducted by the company depending on the game and stake type."

59. He further argued that Petitioners have adopted highest standards of security measures on its platforms for providing its users/ players a secure platform, which are extracted here:

i. The players' deposits are encrypted with 128-bit SSL;

ii. No information about the cards which are dealt are shared with any party and only a player has information about the cards assigned to him or her;

iii. Player's information is stored in a secure environment and is not shared with any third-party except for the purpose of

provision of services by the Platform. The Company enters into Non-Disclosure Agreement with all such parties;

iv. The Petitioner has a dedicated customer support team ensuring prompt response to customer issues, if any, and reported games are monitored on a regular basis to detect any violation of the terms of the Portal by players;

v. Seating of customers is random, and no seat is prefixed for any game. Players, therefore, have no control over selection of other players on any table or their position of seating on the table;

vi. Players logged in from the same IP address/located next to each other/ same GPS location are not allocated seats on the same table;

vii. Information about the playing cards is always encrypted, thereby preventing any third party from viewing the same;

viii. Anti-fraud algorithms are applied to check if players tried to defraud anyone after the completion of games and appropriate action is taken as per the Terms of Service of the Portal; and

ix. Constant improvements are made in the Platform to ensure fair and secure gameplay by deployment of latest software and technical solutions.

60. It was further argued by the Learned Senior Counsel for petitioner, that online rummy involves elements of skill, which are very much required in Physical Rummy, such as memorizing the fall of cards, holding and discarding the cards, by which element of skill predominates element of chance.

61. He also argued that very nature of game of Rummy requires predominant level of skill in playing the game and it does not change even when the game is played online. He further argued that even in online game there is shuffling of cards, the players need to memorize cards that are discarded and accordingly decide on holding and discarding the cards suitable to the game. He further submits that the screenshots of online rummy are filed to assist the Court in understanding the nature of Online Rummy. He reiterated that when players are matched for a game and reach a virtual table, the system uses 'Random Number Generator' algorithm certified by iTech Labs Australia, for distribution of cards, and the said algorithm and certification is the mostly used by all the card gaming online companies across the world.

62. Learned Senior Counsel placed reliance on the Division Bench Judgment of Hon'ble High Court of Madras in ***"Junglee Games India Private Limited v. State of Tamil Nadu[17]"***, and the relevant paragraphs relied upon by the Learned Senior Counsel are as under:

> *"120. It is true that, broadly speaking, games and sporting activities in the physical form cannot be equated with games conducted on the virtual mode or in cyberspace. However, when it comes to card games or board games such as chess or scrabble, there is no distinction between the skill involved in the physical form of the activity or in the virtual form. It is*

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true that Arnold Palmer or Severiano Ballesteros may never have mastered how golf is played on the computer or Messi or Ronaldo may be outplayed by a team of infants in a virtual game of football, but ViswanathanAnand or Omar Sharif would not be so disadvantaged when playing their chosen games of skill on the virtual mode. Such distinction is completely lost in the Amending Act as the original scheme in the Act of 1930 of confining gaming to games of chance has been turned upside down and all games outlawed if played for a stake or for any prize.

121. There appears to be a little doubt that both rummy and poker are games of skill as they involve considerable memory, working out of percentages, the ability to follow the cards on the table and constantly adjust to the changing possibilities of the unseen cards. Poker may not have been recognised in any previous judgment in this country to be a game of skill, but the evidence in such regard as apparent from the American case even convinced the Law Commission to accept the poker as a game of skill in its 276thReport.

122. The present matter does not turn merely on the two games named in Section 3-A of the amended Act being regarded as games of skill. The absurdity of the amended provisions has more to do with all forms of games - where games must be understood to be distinct from gaming, whether in the ordinary parlance or as per the convoluted meaning ascribed to it in the impugned legislation - being prohibited in cyberspace, if played for any prize or stake whatsoever. The cause for bringing the amendments does not appear to have any nexus with the effect that has resulted thereby; and that, in essence, is the unreasonableness and grossly disproportionate feature of the impugned statute."

63. He also placed his reliance on Division Bench Judgment of Hon'ble High Court of Karnataka in ***"All India Gaming Federation v. State of Karnataka"***, where the Hon'ble Court while deciding validity of the amendments made to Karnataka Police Act, 1963, criminalizing playing or facilitation online games held as under:-

> *"X. 7. Note: A game of chance and a game of skill although are not poles asunder, they are two distinct legal concepts of constitutional significance. The distinction lies in the amount of skill involved in the games. There may not be a game of chance which does not involve a scintilla of skill and similarly, there is no game of skill which does not involve some elements of chance. Whether a game is, a 'game of chance' or a 'game of skill', is to be adjudged by applying the Predominance Test: a game involving substantial degree of skill, is not a game of chance, but is only a game of skill and that it does not cease to be one even when played with stakes. As a corollary of this, a game not involving substantial degree of skill, is not a game of skill but is only a game of chance and therefore falls within the scope of Entry 34 in the State List."*
>
> ***"XII. AS TO DIFFERENCE BETWEEN ACTUAL GAMES & VIRTUAL GAMES, AND IF ALL ONLINE GAMES ARE GAMES OF CHANCE:***
>
> *The vehement contention of Learned Advocate General that gaming includes both a 'game of chance' and a 'game of skill', and sometimes also a combination of both, is not supported by his reliance on M.J SIVANI v. STATE OF KARNATAKA. We are not convinced that M.J. SIVANI recognises a functional difference between actual games and virtual games. This case was decided on the basis of a wider interpretation of the definition of 'gaming' in*

the context of a legislation which was enacted to regulate the running of video parlours and not banning of video games; true it is that the Apex Court treated certain video games as falling within the class of 'games of chance' and not of 'games of skill'. However, such a conclusion was arrived at because of manipulation potential of machines that was demonstrated by the reports of a committee of senior police officers; this report specifically stated about the tampering of video game machines for eliminating the chance of winning. This decision cannot be construed repugnant to Chamarbaugwala jurisprudence as explained in K.R. LAKSHMANAN. We are of a considered view that the games of skill do not metamorphise into games of chance merely because they are played online, ceteris paribus. Thus, SIVANI is not the best vehicle for drawing a distinction between actual games and virtual games. What heavily weighed with the Court in the said decision was the adverse police report. It is pertinent to recall Lord Halsbury's observation in QUINN v. LEATHAM : that a case is only authority for what it actually decides in a given fact matrix and not for a proposition that may seem to flow logically from what is decided. This observation received its imprimatur in STATE OF ORISSA v. SUDHANSU SEKHAR MISRA."

"XIX. AS TO ARTICLE 19(1)(g) AND ENTRY 26 (TRADE AND COMMERCE) IN STATE LIST:

(g) The Amendment Act puts games of skill and games of chance on par, when they are poles asunder, in the light of obtaining jurisprudence. The games of skill, in addition to being a type of expression, are entitled to protection under Article 19(1)(g) by virtue of their recognition as business. There are competing interests of State and the individual, which need to be balanced by employing known principles such as doctrine of proportionality, least restrictive test & the

like. A line has to be drawn to mark the boundary between the appropriate field of individual liberty and the State action for the larger good ensuring the least sacrifice from the competing claimants. As already mentioned above, the Amendment Act puts an absolute embargo on the games of skill involving money or stakes. Learned Advocate General contended that the State was not in a position to apply the 'least restrictive test' and that the prohibition being the objective of the Amendment Act, there is no scope for invoking the said test at all. This amounts to throwing the baby with bath water."

"(j) The Apex Court in INDIAN EXPRESS supra extended protection to the Press with the following reasoning:

"…Newspaper industry enjoys two of the fundamental rights, namely the freedom of speech and expression guaranteed under Article 19(l)(a) and the freedom to engage in any profession, occupation, trade, industry or business guaranteed under Article 19(1)(g) of the Constitution, the first because it is concerned with the field of expression and communication and the second because communication has become an occupation or profession and because there is on invasion of trade, business and industry into that field where freedom of expression is being exercised…"

The games of skill as we have reasoned out above involve elements of expression and therefore enjoy regulatable protection under Article 19(1)(a); it has long been settled that these games apparently having business characteristics are protected under Article 19(1)(g). Therefore the above observations in Indian Express equally apply to the case of petitioners. However, the Amendment Act does not critically adjust the boundaries of existing category of protected activities i.e., games of skill with the unprotected acts of gambling. Instead, State has created a wholly new category

of medium-based-regulation when change of medium per se does not alter the true nature & content of the games. The permissible limits of restriction recognized by Chamarbaugwalas are thus trampled, by proscribing the online games by lock, stock & barrel. To scuttle the ship is not to save the cargo : to jettison may be."

64. Sri C. Sumon, learned Special Government Pleader for the State, adverting the contentions of the Petitioners submitted that playing rummy online is in stark contrast to playing rummy physically and differentiated the Physical Rummy and Online Rummy in a tabular form which is extracted hereunder:

OFFLINE RUMMY	**ONLINE RUMMY**
1. SHUFFLING AND DISTRIBUTION OF CARDS	
In manual rummy, the shuffling of cards happens physically in front of all the players. Consequently, there is limited scope for manipulation or knowing the identity of the cards.	In Online Rummy, shuffling of cards is not visible to the players. The online dealer has full visibility of the cards being distributed. Consequently, the online dealer can manipulate the distribution of cards.
2. COLLUSION AMONG PLAYERS	
In manual rummy, players and the dealer are different. The dealer is usually one of the players. If any of the players collaborate with the other players, it will be evident to other players.	In Online Rummy, the dealer (Company) has its on admin players, who disguise themselves as normal players. The disguised players of the gaming company are available at any point of time. Since, it is an online game, the two players collaborate with each other, without the knowledge of another player.
3. MINORS	
If a minor is indulging in Rummy game for stakes, it is easy to ascertain.	In Online Rummy, there is no mechanism for authentication. Any minor by asserting that he is major, is entitled to play.

4. DISTRIBUTION OF WINNINGS	
In manual rummy if the player wins, he will immediately get the winning.	In online Rummy, the winning is transformed into coins/coupons which can be used for further usage. The user can get the winning only upon redeeming the coins/coupons with the bank. However, the Bank takes a minimum of 24 hours to convert the winning into money.
5. VOLUME	
Manual Rummy cannot be played by large number of people. It is played in small groups in small areas which can be curtailed. Moreover, the time during which the manual rummy is being played is also not 24 hours 7 days. Manual Rummy is being played majorly for recreational purposes.	In online Rummy, the number of players is more and it can be played 24 hours 7 days thereby increasing the volume of the players. Moreover, the manual rummy which was for recreational purposes is now an institution by virtue of online rummy.
6. REDRESSAL OF DISPUTES	
In case of any cheating or manipulation, it can be redressed by the dealer and the players.	In online gaming, if any cheating or manipulation arises, there is no option for the player to seek any redressal since he neither knows other players nor has any access to the dealer.

65. From the above differentiation, the argument of Learned Advocate General and Sri C. Sumon, appears to be that in online rummy there is lack of transparency and scope for manipulation, as the shuffling of cards are not visible to players and as the online dealer has full visibility of cards. The Court cannot rule out the chance of the company having its own players in the guise of normal players, as the game is played virtually and one will not know against whom he is playing and scope of minors playing online rummy by asserting as major, cannot be ruled out.

66. Further, if any manipulation or cheating arises, there is no option for player to seek any redressal, as he has no access to dealer or to any other players. As the Online rummy is played against the unknown or automated mechanism, such a game with so many elements of uncertainty/chance and played for the stakes, cannot be ruled as a game of skill.

67. Learned Counsel for the respondents further argued that the judgments relied upon by the Petitioners ***Junglee Games India Private Limited*** [T.N. Judgment] *[supra cited]* and ***All India Gaming Federation*** [Karnataka Judgment] *[supra cited]*, are not applicable to the present case as the judgment of ***Junglee Games India Private Limited*** [T.N. Judgment] was addressed by the Government of Tamil Nadu, by way of an enactment of Ordinance No. 4 of 2022 based on survey and report. Equally, the judgment of ***All India Gaming Federation*** [Karnataka Judgment], can be clearly distinguishable from the facts and question of law, from the present case.

68. Learned Counsel appearing for the State, argued that, the judgments of the Hon'ble Supreme Court relied upon by the Petitioners have held that rummy played physically is a "Game of Skill" and the decisions of the Hon'ble Supreme Court would not apply to "Online Game of Rummy", since, Online game is not only played in different format but approach itself is different.

69. Sri. C. Sumon, Learned Counsel, assisting the learned Advocate General, argued that, players of "physical rummy" would train themselves to the various vagaries of the game, over a period of time, whereas, the same amount of training is not available to online players of rummy, which makes 'Online Rummy' more a "game of chance" than "skill". He further stressed that in "physical rummy", players builds his game of rummy by paying attention to every card picked or discarded by the opponents, thus, the attention is paid to entire game and not just to the cards in his hand. This is not possible while playing online rummy as players in Online rummy are given a limited amount of time to pick up a card from the deck and then to discard a card, if a player fails to discard the card within the time-limit set, then the last card picked up by the player from the deck gets discarded automatically. Thus, due to pressure of time-limit set by the Petitioners to discard the cards, the players attention to the game is curtailed. Whereas, no such time-limit to discard a card is set to the players in physical rummy, which makes online rummy a more "game of chance" rather than a "game of skill".

70. He further contended that, there could be various reasons for delay in discarding a card by the player within the time allotted by the Petitioners, ranging from a bad internet connection for a player to loss of server connection to cut in electricity at the Petitioners end. In any of such

situations, though a player was on a winning hand, he will lose his potentiality of the same.

71. Relying on ***K.R Lakshmanan*** case *[supra cited]* wherein the Hon'ble Supreme Court held that, "*a game of skill, on the other hand although the element of chance necessarily cannot be entirely eliminated, is one in which success depends principally upon the superior knowledge, training, attention, experience and adroitness of the player*", argued that "game of chance" is one in which the element of chance predominates over the element of skill, and "game of skill" in which the element of skill predominates over the element of chance. He further argued that, the players skill is based on superior knowledge, training, attention, experience and adroitness of the player and that is what makes a "rummy" a "game of skill", and "online rummy" does not satisfy any of these five requirements, thus, the Petitioners have utterly failed to show that "online rummy" satisfies the requirement of a "game of skill".

72. He further argued that, the superior knowledge referred to by the Hon'ble Supreme Court in physical rummy, is the knowledge which a player gains from playing a set of persons sitting infront of him and he also gains knowledge about the players playing against him by observing their game and then playing his game accordingly. Further, in 'physical rummy' players have advantage of seeing other players reactions and assessing the flow of the game, which is impossible in 'Online Rummy', as

a player does not know against whom he is playing and cannot gain knowledge about the opponents method of discarding the cards etc. In short, the argument of learned counsel appears to be that, in "physical rummy" a player not only plays the game but also plays the mind of the opposite players, which is not possible in 'Online Rummy'.

73. While rebutting the contention of setting time-limit to discard a card by a player in Online Rummy, Sri. C. V. Mohan Reddy, learned Senior Counsel appearing for Writ Petitioners, would submit that, in an online platform provided by "Head Digital" (Petitioner No. 1 in W.P. No. 19732 of 2020), the first player gets 45 seconds for his turn and then onwards every player gets 30 seconds to play his turn. In case, if the player does not play his turn within 30 seconds, then additional 10 seconds will be given to player. This additional 10 seconds is awarded in each turn. If the player fails to discard the card during the time allotted, which includes additional time, then the last picked card by the said player gets automatically discarded. Whereas, in an online platform provided by "Play Games 24x7 Private Limited" (Petitioner No. 1 in W.P. No. 19659 of 2020), the usual time given for a player to play their turn is 30 seconds. Additionally, every player is allotted 90 seconds of bonus time in a game, which can be used by a player either in chunks across turns or in a single turn. Similarly, in online platform provided by "Junglee Games India Private Limited" (Petitioner No. 1 in W.P. No. 19571 of 2020), the usual

time given for a player to play their turn is 30 seconds, whereas, additional 30 seconds is allotted to the player, which can be used by a player in chunks across turns or in a single turn. Therefore, there is no prejudice caused to the player in "Online Rummy", as sufficient time is given to discard their cards. Thus, the learned Senior Counsel submits that the averment of Respondents that lack of time to a player in discarding a card makes "Online Rummy" more a "Game of Chance" rather than a "Game of Skill" does not hold ground.

74. From the above, it is apparent that there is no material to show the manner in which Online Rummy is played. Without knowing how it is played and the manner in which the operator functions, it may not be proper for this Court to come to a conclusion on disputed factual aspects, which we noted above. Each of the writ petitioner is fixing its own time limit for discarding a card and if it is not done within the time fixed, the last picked card would automatically get discarded. Further, it also to be known whether the time given by each of the operators for discarding the cards including the additional time, given to discard a card is for that deal or for the entire game. Though, the extracts taken from online coupled with screenshots show display of cards discarded, but Sri C. Sumon, would contend that only the last discarded card is seen on the screen by the players. But, these disputed question of facts, namely, as to how it is played and operated, cannot be decided basing on these disputed facts,

more so, when there is a regulation in time limit for discarding a card and when the game can be played from any place even by a minor, being not in dispute].

75. Further, the learned Counsel, appearing for the State would contend that the game has to be played with unknown person or with the operator of the platform. When the operator is one of the players or when the game itself can be played by the operator, can it be said that the game is played in a fool proof manner, avoiding mischief and malpractice. It is no doubt true that the averments in the affidavit and the material downloaded from the internet by the petitioners indicate restrictions imposed and the precautions taken etc. but the respondents have also placed on record material in the form of affidavit and screenshots contending existence of 'element of chance' being more than the 'element of skill'. Probably, for this reason, the State of Tamil Nadu, appointed a Committee, headed by Justice K. Chandru, to study the manner in which the game is played and also as to whether any chance is involved, and if so, to what extent.

76. Therefore, in the circumstances of the case and having regard to the submissions made by Sri C. Sumon, learned Special Government Pleader, we feel that pending writ petitions, it would be just and proper to direct the State Government to constitute a Committee consisting of a Judicial, Independent-Technical and Non-Technical Members [nothing to do with the Government], Two persons representing the platform operators, one

Police Officer of the rank of Director General [well-versed in Information Technology] as Members of Committee and/any other Member representing the Government, to examine and submit a report as to the manner in which the Online Rummy is being played, within a period of Four [4] weeks from the date of receipt of a copy of this order. This exercise in our view is necessary for the reason that all the above issues raised for consideration would depend upon the manner in which Online Rummy is played [namely whether it is game of skill or game of chance].

77. List after four (4) weeks.

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JUSTICE C. PRAVEEN KUMAR

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DR. JUSTICE K. MANMADHA RAO

Date: 31.01.2023
Note: **Registry to communicate the order to the parties concerned, forthwith.**
B/o. SM / MS

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

THE HON'BLE DR. JUSTICE K. MANMADHA RAO

Writ Petition Nos.19659,19571 & 19732 of 2020

(per the Hon'ble Sri Justice C. Praveen Kumar)

Date: 31.01.2023

MS