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A Critique on Varun Gumber v. Union Territory of Chandigarh & Ors. [2017]

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Abstract

In India fantasy games are accepted immensely, fantasy sports/games are a new kind of gaming that is played virtually having real-life players. Virtual gaming is at its peak because of the increasing use of the internet all over the world. the current online gaming user base in the country is estimated to be around 365 million. In the present case we will be focusing on the virtual gaming league, the petitioner participated in on the respondents gaming website. As the case goes ahead, we will see there is a distinction made concerning skills and game chance. There are different views given by the judges on gambling, skill, virtual gaming, and how it doesn't come under the preview of gambling.

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Facts of the Case

The petitioner in this case enrolled himself on the respondent's gaming website with his email id. The petitioner as per the requirement of the game took part in the group games or the league² game as mentioned in the case, designed by the respondent's website. The format of the game was online playing where payments were also to be done using a credit card, so the petitioner credited to his account Rs. 50,000/-, After doing the required formality to play online, he had to make two virtual teams play cricket. As per the format he had to form a team of 11 players each. The petitioners used around Rs.24,000/- for this cricket game, ultimately in the end he lost. Once again, the petitioner in the same way ventured Rs.26,000/- in the virtual football team and this time as well he lost the entire sum of money. After losing the game twice the petitioner noticed the game did not require any special capability but was just based on contingency. To say the game was wholly based on some random device. The petitioner claims the task provided by the website are not based on skill but based on the pure game of chance. The petitioner sent a legal notice to the respondent to stop the illicit activities carried on by the respondent. He contended that he should get the money back that he lost in the virtual games were being played by him.

The respondent in their reply denied the allegations made by the petitioner, stating they do not carry any such illicit activities that are punishable under the gambling act. The respondent has described elaboratively how Dream 11 Fantasy³ game works. The respondent company is registered under the Registrar of Companies, they are also holding PAN No. issued by the income tax authorities. The company is an outstanding fantasy sports game that offers different games like cricket, football, kabaddi, etc. from the year 2012 along with their other well-known business partners that other websites and social media platforms.

Further, they explained what fantasy sports game is and how it is to be played. A fantasy game is played over the internet where players make virtual teams choosing real-life players. The win or loss in the fantasy game is dependent upon the real performance of the player you have chosen in your team, so if X is on your side and hits a century, you earn points. Then you can get rewards directly in your bank account or wallet. But initially, you need to pay a nominal fee. To play

² *Varun Gumber v/s Union Territory of Chandigarh & Others*, Lawyer Services, (Dec. 25, 2021, 11:54 AM), <https://www.lawyerservices.in/Varun-Gumber-Versus-Union-Territory-of-Chandigarh-and-Others-2017-04-18>.

³ *Shri Varun Gambur v. UT of Chandigarh & Ors*, Punjab & Haryana High Court (Apr 18, 2017), Casemine, (Dec. 25, 2021, 11:54 AM), <https://www.casemine.com/judgement/in/596dd1ee4a93260b5a0444e0>.

Indexed at **Manupatra**

online one requires a fair amount of skill in drafting a virtual team and playing a fantasy sports game. The requirement of the game is also that the user needs to frame in the virtual game, all sportsperson's skills are to be taken into consideration. The user examines the rules and identifies the strengths and weaknesses based on the rules.⁴ The respondent has brought to the notice of the court; the petitioner fulfilled the conditions of the online games that are provided by the respondent company. The petitioner had taken part in fantasy cricket games South Africa Domestic T20 cricket match between the Dolphins and Warriors. The amount was refunded back to the petitioner when he left the game halfway. There are records of the invoice with the respondent. Dream 11 allows participates to take part in the platform, it also allows participates to compete with other uses for certain prize money.

Judgment

The Hon'ble Supreme Court has held that:

- i. *the competition where success depends on the substantial degree of skills are not gambling*
- ii. *despite there being an element of chance, if a game is preponderantly a game of skill it would nevertheless be a game of mere skill.*⁵

The judge is of the view that if any participant has participated in the virtual game reasonable amount of skill, judgment and discretion is involved. The participant has to consider every sportsperson's ability and worthwhile choosing a team in the virtual game. The user has to learn the guidelines and instructions of the virtual game. As per the requirement of the dream 11 instructions, the petitioner formed a cricket team between two countries and choose 11 players in each team, he played in different group games that were being offered by the respondent virtual game. He joined and registered on different leagues selected by himself where there was a possibility of either winning or losing the game. The success of the respondent company is entirely based on the participates, user, and their knowledge.

Further, the judge is of the view that the respondent's company does not come under the ambit of the provisions of the gambling activities and is exempted from the penal provision. Gambling is not a trade and the respondent company is safeguarded under Article 19(1)(g) of the constitution as the company is duly registered under the Registrar of companies, they are also

⁴ Ibid.

⁵ Supra Note 2.

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paying service tax and income tax. The judgment is in favor of the respondent company and hence the writ petition is dismissed.

Analysis

In my opinion with the hype of online gaming or fantasy, gaming is very much to even put in words. While participating in such games the users use their intellect, knowledge, and skill in virtual gaming. The temptation/addiction to the internet has impacted the human brain which is out of control, which had led to mental instability for some of them. When it comes to playing online or virtually playing any kind of league there is still confusion in the minds of the users, they feel it is some sort of gambling.

In the hope or greed to say some people play and spend a lot of time on online games that they will earn double the amount. Online games are operated by random devices, that decide the probability of win or loss outcome of any participant. Though such companies functioning are registered and they pay service tax income tax, they should expressly mention that these gaming activities are truly based on “game of skill”. However, these virtual gaming companies help in economic growth and generate employment.

In a recent report by FICCI-EY the e-sports business in India is Rs.3 billion in 2021 by 2025 it will reach Rs.11 billion.⁶

In a country like India that has a high population rate, it is the need for an hour the people/ younger generation should be given proper education so they can distinguish between the good and bad. By just providing internet services or circulating tablets/ computers or laptops the youth won't be educated.

⁶ Madhur, *Fantastic Future of Fantasy Sports? Critically Analyzing NITI Aayog's Draft Guidelines*, CAN's Vedanam, (Dec. 25, 2021, 11:56 AM), http://vedanam.canfoundation.in/blog_fantasy_sports.php.