

Indexed at **Manupatra****A Critique on Gurdeep Singh Sachar v. Union of India (2019)**By *Rohitkumar Raut*¹**Abstract**

In recent years, India has seen a tremendous surge in the number of internet users, as access to the same has become easier and cheaper than before. As part of the surge, the online gaming sector in India has also seen a drastic increase in the number of users that utilize such services, especially the fantasy sports segment. Companies like Dream11, HalaPlay, Mobile Premier League (MPL), are some of the biggest names, in terms of the number of users, that are engaged in the fantasy sports sector. But, the business of fantasy sports has also raised many doubts regarding its legality and ethics. One such case dealing with the legality of fantasy sports is that of Gurdeep Singh Sachar v. Union of India Ors.

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Indexed at **Manupatra**

Introduction

The recent years have seen a lot of growth for the telecom industries as the number of internet users in India has increased drastically in the country. And a big chunk of these internet users now spends their time utilizing the services provided by the fantasy sports sector on the internet. Fantasy sport, also called rotisserie sport or roto, is any of several games that permit a person to play either a virtual game or a virtual season of a sport.² With a user base of around 90 million in 2019, according to a study by the Federation of Indian Fantasy Sports in collaboration with KPMG, the fantasy sports industry is now generating revenues that nobody would have imagined in the Super Selector era.³ However, as the users who make use of such services grow, it has also raised eyebrows regarding the legality of such platforms and also claiming that such services are based on and encourage the practice of wagering or gambling. Through the means of this case analysis, the author means to shed light on the case of *Gurdeep Singh Sachar v. Union of India Ors.*⁴ which deals with the issue of the legality of fantasy sports platforms.

Facts of The Case

This case involved the Petitioner, advocate Gurdeep Singh Sachar filing a criminal Public Interest Litigation (Hereinafter referred to as “PIL”) before the High Court of Bombay against fantasy sports company, Dream11 Fantasy Pvt. Ltd. which was, therefore, the Respondent in this case. The PIL was filed to commence criminal proceedings against the Respondent, firstly for allegedly conducting illegal operations of gambling/betting/wagering in the guise of Online Fantasy Sports Gaming and secondly for alleged evasion of Goods and Service Tax (Hereinafter referred to as “GST”) payable by it.⁵ According to the Petitioner, the former issue violated rules laid down in The Public Gambling Act, 1867 while the latter violated the regulations established by the GST Act in addition to Rule 31A(3) of The CGST Rules, 2018⁶.

The Respondent, in reply to the PIL, put forward that the issues raised in the case have already been decided upon by the Punjab and Haryana High Court in *Varun Gumber v. Union Territory of*

² BRITANNICA, <https://www.britannica.com/sports/fantasy-sport> (last visited Nov. 28, 2021).

³ Kashif Ansari, *A breakdown of India's fantasy sports industry*, LIVEMINT (Oct. 31, 2021, 11:56 PM), <https://www.livemint.com/money/personal-finance/a-breakdown-of-india-s-fantasy-sports-industry-11635699153058.html>.

⁴ SLP (Crl.) Diary No. 42282 of 2019.

⁵ CASEMINE, <https://www.casemine.com/judgement/in/5de5f8554a93266a5d727693> (last visited Nov. 28, 2021).

⁶ Central Goods and Services Tax Rules, 2017, § 31A(3), No. 12, Acts of Parliament, 2017 (India).

Indexed at **Manupatra**

Chandigarh⁷ wherein it was held that Dream11 and other fantasy games are exempted from the Public Gambling Act, given section 18 of the said act as the playing of fantasy games requires exercise knowledge, attention, and judgment which is a matter of skill and not of mere chance.⁸ Further, it was also held that Dream 11 was protected under Article 19(1)(g)⁹ of the Indian Constitution. A Special Leave Petition (SLP) against this decision was filed before the Supreme Court of India but it was subsequently dismissed.

Issues Raised

The following issues were raised in the abovementioned case:

- I. Whether the operations that the Respondent was engaged in constituted gambling/betting/wagering?
- II. Whether the Respondent through the activities engaged in, violated rules established in the GST Act in addition to Rule 31A (3) of The CGST Rules, 2018¹⁰?

Case Analysis

Instead of resorting to an alternative stance in this judgment, the High Court of Bombay relied on the decision made by the Punjab and Haryana High Court in *Varun Gumber v. Union Territory of Chandigarh*¹¹. In that case, it was determined by the Court that the activities Dream 11 is engaged in are not chance-based but rather skill-based, hence they do not constitute gambling. The High Court of Bombay also observed the judgment of the Supreme Court in *K.R. Lakshmanan v. State of T.N.*¹², which considered whether the practice of horse racing is a chance-based game or one that required substantial skill, and relied on the case of *Andhra Pradesh v. K. Satyanarayana*¹³, which considered the legitimacy of Rummy and arrived at the conclusion that competitions and games where victory is dependent on skills and not mere chance cannot be constituted as gambling. Further, the Court went on to observe that even if the game comprises of a factor of chance, if the game is predominantly one that is based on skill, it would still be deemed as a game

⁷ *Varun Gumber v. Union Territory of Chandigarh*, 2017 Cri LJ 3827.

⁸ Harsh Vardhan Bhojak, *Gurdeep Singh Sachar v. Union of India*, UNLAWKED (Nov. 29, 2021, 11:43 PM), <https://www.unlawked.com/2020/09/gurdeep-singh-sachar-v-union-of-india.html>.

⁹ INDIA CONST. art. 19, cl. 1(g).

¹⁰ Central Goods and Services Tax Rules, 2017, *supra* note 6.

¹¹ *Varun*, *supra* note 7.

¹² *K.R. Lakshmanan v. State of T.N.*, 1996 AIR 1153.

¹³ *Andhra Pradesh v. K. Satyanarayana*, 1968 AIR 825.

Indexed at **Manupatra**

of 'mere skill' and not one of 'mere chance'. The Apex Court had relied on the same judgment to rule that the game of horse-racing is one of 'mere skill', although the chance is a contributing factor in *K.R. Lakshmanan v. the State of T.N.*¹⁴

Based on these decisions, the High Court of Bombay ruled that the Respondent's fantasy sports gaming platform is not prohibited and does not constitute gambling, betting, or wagering under the pretext of online fantasy sports.¹⁵ The Court noted that the said online game does not depend on the outcome of matches taking place in the real world and that participants, using their expertise and skill, build virtual teams that comprise of players including members of both teams, making victory or loss in these games a matter of 'skill' rather than chance.

The court further stated that a charge of GST evasion is based on the first issue's premise and that tax evasion is only possible if the fantasy sports is 'gambling/betting.' Hence, as fantasy sports is not engaged in gambling, wagering, or betting, the premise of tax evasion itself falls apart.

Conclusion

In the case of *Gurdeep Singh Sachar v. Union of India Ors.*¹⁶, the High Court of Bombay ruled that Dream11's operations are not illegal and do not constitute the offenses of gambling, betting, or wagering under the pretence of fantasy sports gaming.¹⁷ It was emphasized that if the game is primarily one that consists of skill, even if a component of chance is involved, it will not be considered gambling or betting, but rather a game of 'mere skill.'

A PIL alleging that Dream 11 was involved in cricket betting was dismissed by the Rajasthan High Court in 2020.¹⁸ Further, an appeal was filed before the Supreme Court against the decision given by the Rajasthan High Court which was subsequently dismissed by the Supreme Court in August of 2021, upholding the decision passed by the Rajasthan High Court.

In light of the above-mentioned facts and circumstances, it can be safely concluded that fantasy sports games in India are not illegal as long as they do not encourage, employ or promote activities constituting gambling, wagering, and betting. There is no particular legislation as such that exists in India currently to deal with the menace of gambling in fantasy sports games and platforms.

¹⁴ K.R., *supra* note 12.

¹⁵ Harsh, *supra* note 8.

¹⁶ Gurdeep, *supra* note 4.

¹⁷ Harsh, *supra* note 8.

¹⁸ HELPLINE LAW, <https://www.helplinelaw.com/business-law/LSOFSI/legal-status-of-online-fantasy-sports-in-india.html> (last visited Nov. 29, 2021).

Indexed at **Manupatra**

The enactment of the same could prove to be extremely financial as such a statute could define the legality of fantasy sports platforms in a much more distinct and clear way and therefore eradicate any doubts or suspicions in the minds of people surrounding the ethics of such services and their legitimacy.

This decision has also helped in strengthening the stance of fantasy sports platforms and helped give a ray of hope to rising entrepreneurs looking to get into the sector. India has one of the largest internet user bases in the entire globe and businesses like these have the potential to harness the power of such a large user base. Further, it also helps the government generate revenue in the form of taxes while ensuring that the fantasy sports platform operates within the ambit of the law. The number of users that utilize the services of such fantasy sports platforms has also been increasing day-by-day and hence the decisions of the various High Courts and the Supreme Court regarding the issue reinforced the trust that people put in such platforms.

