

(2017) 12 GUJ CK 0051

In the Gujarat High Court

Case No : Special Civil Application No. 6903, 5330, 9772, 10935, 11174, 11179, 12596, 12653 Of 2017

Dominance Games Pvt Ltd

APPELLANT

Vs

State Of Gujarat & 2

RESPONDENT

Date of Decision : 04-12-2017

Acts Referred:

Constitution Of India, 1950 — Article 14, 19, 19(1), 19(2), 19(3), 19(4), 19(5), 19(6), 19(1)(a), 19(1)(b), 19(1)(c), 19(1)(d), 19(1)(e), 19(1)(f), 19(1)(g), 21, 37, 47, 226, 246, 301

Gujarat Prevention Of Gambling Act, 1887 — Section 3, 13, 14

Madras City Police Act, 1988 — Section 49, 49A

Bombay Lotteries (Control And Tax) And Prize Competitions (Tax) Act, 1958 — Section 12A

Citation : (2017) 12 GUJ CK 0051

Hon'ble Judges : Rajesh H.Shukla, J

Bench : Single Bench

Advocate : Mihir Thakore, Garima Malhotra, ML Shah, IH Syed, SV Raju, SI Nanavati, Maulin G Pandya, Bhargav Pandya, Jyoti Bhatt, Amit Barot, Tarak Damani, Siddharth H Dave, SD Motwani

Final Decision : Dismissed

Judgement

Rajesh H.Shukla, J

1. Rule. Learned advocates appearing for the respective parties waive service of notice of Rule.

2. Since the issue involved in the present group of petitions is common, all these matters are heard together and are being decided by this common judgment.

3. The present group of petitions are filed by the petitioners under Articles 14, 19, 21 and 226 of the Constitution of India as well as under the provision

of the Gujarat Prevention of Gambling Act, 1997 (hereinafter referred to as the Gambling Act) for the prayers as prayed for inter alia that

appropriate writ, order or direction may be issued for quashing and setting aside the order dated 15th March, 2017 and also for declaration that game

of poker is a game of skill and not a game of chance and, therefore, covered under the exception carved out by Section 13 of the Gujarat Prevention

of Gambling Act, 1887 on the grounds stated in the memo of petition.

4. Heard learned Senior Counsel, Shri Mihir Thakore appearing with learned advocate, Shri Vishal Patel with learned advocate, Ms. Garima Malhotra

for the petitioner and learned Government Pleader, Ms. Manish Shah appearing with learned AGP Ms. Nisha Thakore for the respondents in Special

Civil Application No. 6903 of 2017, learned Counsel, Shri I.H. Syed appearing with learned advocate, Shri Nachiket Dave for the petitioner and learned

Government Pleader, Ms. Manish Shah appearing with learned AGP Ms. Nisha Thakore for the respondents in Special Civil Application No. 9772 of

2017, learned Senior Counsel, Shri S.V. Raju as well as learned Senior Counsel, Shri S.I. Nanavati appearing with learned advocate, Shri Maulin

Pandya for the petitioner and learned Government Pleader, Ms. Manish Shah appearing with learned AGP Shri Bhargav Pandya for the respondents in

Special Civil Application No. 11174/11175 of 2017, learned AGP Ms. Jyoti Bhatt in Special Civil Application No. 11176-11177 of 2017 and learned

AGP Shri Bhargav Pandya in Special Civil Application No. 11178-11179 of 2017, learned Senior Counsel, Shri Mihir Thakore appearing with learned

advocate, Shri Tarak Damani for the petitioner and learned Government Pleader, Ms. Manish Shah appearing with learned AGP Shri Bhargav Pandya

for the respondents in Special Civil Application No. 12596 of 2017, learned advocate, Shri A.N. Patel for the petitioner and learned Government

Pleader, Ms. Manish Shah appearing with learned AGP Shri Bhargav Pandya for the respondents in Special Civil Application No. 12653 of 2017,

learned advocate, Shri Siddhartha Dave for the petitioner and learned Government Pleader, Ms. Manish Shah appearing with learned AGP Shri

Bhargav Pandya for the respondents in Special Civil Application No. 5330 of 2017 and learned advocate, Shri S.D. Motwani for the petitioners and

learned Government Pleader, Ms. Manish Shah appearing with learned AGP Shri Bhargav Pandya for the respondents in Special Civil Application

No.10935 of 2017.

5. Learned Senior Counsel, Shri Mihir Thakore referred to the background of the facts and submitted that for Section 13 of the Gambling Act,

identical wordings have been interpreted by the Honâ??ble Apex Court. He submitted that therefore once it is shown that poker is a game of skill,

Gambling Act would not be attracted. Learned Senior Counsel, Shri Mihir Thakore referred to Section 13 of the Gambling Act and submitted that it

provides for exception and, therefore, the Court is required to examine as to whether the poker can be said to be a game of skill or game of chance.

Learned Senior Counsel, Shri Mihir Thakore submitted that there is always an element of chance. He submitted that if the interpretation of the State is

accepted then, there could be a no game played as even in the game of skill, element of chance would be there. In support of his submissions, he has

referred to and relied upon the judgment in case of State of Andhra Pradesh Vs. K. Satynarayana, reported in AIR 1968 SC 825 H. e referred to the

observations made in Para No.5 and emphasized that referring to the game of Rummy, the discussion has been made. It has been observed that game

of Rummy played in the club was not accepted as gambling and it was not held to be gambling. He emphasized the observation,

â??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 'threeÂ 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 as it did.â??

6. Learned Senior Counsel, Shri Mihir Thakore therefore submitted that if it is an entirely a game of chance, it is gambling but if there is a substantial

degree of skill then, it is not entirely a game of chance and therefore, game of poker would be covered by the exception.

7. Learned Senior Counsel, Shri Mihir Thakore referred to the judgment of the Honâ??ble Apex Court in case of Dr. K.R. Lakshmanan Vs. State of

Tamil Nadi & Anr., reported in (1996) 2 SCC 226, which is regarding the horse racing. He referred to the judgment at length and submitted that horse

racing has been considered as to whether it could be a game of mere skill or it is a gambling. He referred to the observation made in Paragraph No.11

and submitted that Madras City Police Act, 1988 had considered it as â??gamingâ? and he emphasized that it has been considered in Paragraph

No.12 also. He submitted that the Court has considered the amendment of Tamilnadu Act i.e. Tamil Nadu Horse Races (Abolition and Wagering or

Betting) Act, 1974 with reference to betting and gambling. He submitted that while considering this aspect, reference was also made to the judgment

in case of R.M.D. Chamarbaugwala Vs. Union of India, reported in AIR 1957 SC 628 and Section 49 of the Madras City Police Act, 1988, which

was subsequently amended by adding Section 49A. He referred to Paragraph Nos.19 and 20 and submitted that as observed in Paragraph No.20, it

has been clearly observed referring to earlier judgment in case of Chamarbaugwala case and Satyanarayana case that what could be the criteria for

the purpose of deciding as to whether it is a game of skill or chance. He emphasized that as observed in Paragraph No.21, whether success depends

on substantial degree of skill is not â??gamblingâ? inspite of the fact that there is an element of chance. Therefore, learned Senior Counsel, Shri Mihir

Thakore submitted that if the game involves a substantial degree of preponderance of skill, it would be a game of skill even if there is an element of

chance. He submitted that while deciding the horse racing, what could be relevant aspect and how the horse racing has been held to be a game of skill

has been considered. He emphasized the observation quoted from the New Encyclopedia Britannica, 15th Edn., Vol.5 referring to the â??gamblingâ?

and horse racing,

“Betting on horse racing on athletic contests involves the assessment of a contestant’s physical capacity and the use of other evaluative skills”

8. Therefore, learned Senior Counsel, Shri Mihir Thakore submitted that if once game poker involves the evaluative skill vis-à-vis other game and/or

card, it makes it a game of skill. Learned Senior Counsel, Shri Mihir Thakore therefore submitted that if it is predominantly a game of skill, it would not

be included in gambling. He submitted that in the State of West Bengal and Meghalaya, it has been accepted as legal and by Legislature, it has been

held to be not gambling. He referred to the Notification by the West Bengal Gambling and Prize Competitions Act, 1957 and also Notification issued

by the Government of Nagaland, Department of Justice & Law, Kohima, Nagaland dated 02.04.2016. He also referred to affidavit in reply filed by

the respondent no.2, Commissioner of Police, Ahmedabad City and pointedly referred to some of paragraphs including Para No.7. He submitted that

difference is sought to be made with game of Rummy and Section 3 of the Gambling Act, which defines a word “gaming”. He submitted that it

has been stated in the affidavit in reply that game of poker is a game, where the factor of skill is insignificant as the game is predominantly based on

a chance and thus, the distinction is sought to be made with game of Rummy. He, however, submitted that like game of Rummy, when the cards are

shuffled, at that stage, it is a chance, however, it is thereafter when the player is having card and how he plays the game would make the difference

and, therefore, it is a game of skill.

9. Learned Senior Counsel, Shri Mihir Thakore has also referred to the provision of the Gambling Act, particularly, Section 13 of the Gambling Act.

Learned Senior Counsel, Shri Mihir Thakore submitted that if there is a game of mere skill then, Gambling Act does not apply. He has also referred to

the word “game” and “instrument of gaming” and submitted that it is a game with skill rather than chance. Learned Senior Counsel, Shri

Mihir Thakore referred to the judgment of the Hon’ble Apex Court in case of K. Satyanarayana (supra) and submitted that what card is received

by a player is a chance, however what is relevant test is how one plays thereafter and, therefore, it is a skill. He emphasized that as observed, Rummy

is held to be a game of skill and not a game of chance. Similarly, learned Senior Counsel, Shri Mihir Thakore has referred to the judgment of the

Honâble Apex Court in case of Dr. K.R. Lakshmanan (supra). He submitted that the petitioner has fundamental right to carry on trade and

business of game and it is protected under Article 19(1)(g) of the Constitution of India. Learned Senior Counsel, Shri Mihir Thakore submitted that

poker is a predominantly game of skill and, therefore, such right could not be taken away as it is protected under Article 19(1)(g) of the Constitution of

India. He submitted that restrictions, which are sought to be made also, cannot be said to be reasonable restriction and in any case, it is prohibition,

which is arbitrary and illegal. Learned Senior Counsel, Shri Mihir Thakore submitted that if it is not a gambling and game of skill then, the right of the

petitioner to carry on such business is required to be protected under Article 19(1)(g) of the Constitution of India. He emphasized that refusal of NOC

is violating the Article 19(1)(g) of the Constitution of India. He emphasized that NOC could not have been refused or denied on such wrong

interpretation affecting the right of the person like the petitioner. Learned Senior Counsel, Shri Mihir Thakore referred to the observations made in

Paragraph No.13 and submitted that Madras City Police Act, 1988 was amended and amendment was challenged before the High Court by way of

writ petition under Article 226 of the Constitution of India with regard to the horse racing contending that it was not a gambling and also on the ground

of legislative competence to legislate. Learned Senior Counsel, Shri Mihir Thakore referred to Entry 34 and submitted that it provides for, ""Betting and

gambling"" and unless both betting and gambling are involved, the State Legislature has no legislative competence to make the law. Learned Senior

Counsel, Shri Mihir Thakore emphasized the observation made in Paragraph No.19 and also emphasized the observation made in Paragraph No.30

that the horseÂracing is a sport which primarily depends on the special ability acquired by training. He, therefore, submitted that poker is a game of

skill and not a game of chance. He submitted that poker is predominant game of skill rather than chance. For that purpose, learned Senior Counsel,

Shri Mihir Thakore referred to some Expertâs opinion referring to the judgment of the United States District Court and submitted referring to

testimony of the Expert that it is a game of skill. He referred to the Research & Review Journal by Robert C. Hannum Anthony N. Cabot,

â??Towards Legalization of Poker :

The Skill Vs. Chance Debateâ??

10. Learned Senior Counsel, Shri Mihir Thakore emphasized on the game of poker, skill and chance.

He emphasized that how it is a game of skill and argued that a player can alter the expected outcome and, therefore, it is not a game of chance. He

emphasized that,

â??In game of skill, player can alter the expected outcome; not so for a game of pure chance. The expected win in poker, on the

other hand, depends on the skill or strategy employed by the player. In poker, certain knowledge can be brought to bear on the decisions made during

the game, resulting in a greater expected win. While there are arguably various facets of â??skillâ?? in poker, the combinations of these facets are

expressed through one element, betting â?" the decision on how much money (if any) to invest. Betting strategy in poker â?" whether to fold or bet

and how much to bet â?" is a decision made of a playerâ??s own free will and is something at which a player can become skillful. A playerâ??s

betting methods can get better or worse.â??

11. Learned Senior Counsel, Shri Raju, therefore, submitted that predominantly it is a game of skill rather than that of chance. He referred to the

judgment of the Calcutta High Court. He also referred to the affidavitÂinÂreply filed by the respondents and submitted that though question has been

raised with regard to the maintainability of the petition, the petition would be maintainable He, therefore, submitted that the contention raised about the

maintainability of the petition is misconceived. He submitted that decision is taken by the authority on presumption and assumption without any material

that poker is a game of chance. He again referred to the affidavitÂinÂreply. Learned Senior Counsel, Shri Raju submitted that in the guise of poker,

even if it is apprehension that gambling is made, CCTV Camera or any reasonable restriction can be imposed. Therefore, learned Senior Counsel, Shri

Raju submitted that the order passed by the authority is in violation of principle of natural justice as the petitioner has right to be heard and if such

opportunity was given, it could have been clarified. Learned Senior Counsel, Shri Raju submitted that as no hearing is given, the decision is not based

on any material as nothing is discovered regarding the material for gambling, on

the basis of which, it could be concluded that it is a game of chance and there is gambling. He emphasized that the affidavit in reply does not reveal any material or data to support the contention of the State that on what basis, the decision is taken that the poker is a game of chance and, therefore, covered under the Gambling Act. He emphasized that therefore such decision is made on the basis of the assumption and presumption without any material. Learned Senior Counsel, Shri Raju submitted that the petitioner has fundamental right to carry on trade or business, which cannot be prohibited or restricted in absence of any material and, therefore, the refusal of permission or NOC is arbitrary and illegal. Learned Senior Counsel, Shri Raju submitted that State of West Bengal and Nagaland have issued Notification, which have not considered the poker as gambling.

12. Learned advocate, Shri Syed appearing with learned advocate, Shri Nachiket Dave submitted that the issue is as to whether poker is a game of chance or predominant skill. Learned advocate, Shri Syed submitted that there is nothing to suggest as to how the poker can be said to be a game of chance. He, therefore, submitted that there is no game where there is no element of chance or it does not require any skill. Learned advocate, Shri Syed therefore submitted that it is always a mix elements of chance and skill in a game. Learned advocate, Shri Syed referred to and relied upon the judgment in case of K. Satynarayana (supra) and referring to the game of Rummy, he emphasized the observation made in Paragraph No.12. Learned advocate, Shri Syed submitted that though it is a game involving a chance, it has not been gambling and is therefore not covered within the definition of Gambling Act. He also referred to the affidavit in reply and submitted that same contentions are raised, however, the petitioners are having fundamental rights, which cannot be denied without any authority of law and it has to be shown that game of poker is gambling covered under the definition of Gambling Act. Therefore, learned advocate, Shri Syed submitted that poker is not entirely a game of chance but predominantly a game of skill and as the skill is involved, it could not be a game of chance and, therefore, it would be taken out of the definition of the Gambling Act. He, therefore, submitted that Gambling Act would not be applicable. Learned advocate, Shri Syed submitted that he would adopt the submissions made by learned advocate, Shri S.V. Raju. However he submitted that moment the

element of skill is shown, it would not remain as gambling and, therefore, it would take the game out of purview of gambling as defined under the Gambling Act.

13. Learned Government Pleader, Ms.Shah for the respondent State has submitted that the judgments referred to are with regard to the game of

Rummy outside the purview of the gambling. However, it is required to be considered as to whether the game of poker would attract the provision of

the Gambling Act. She submitted that for that purpose, it is required to be considered whether it is predominantly a game of skill or chance. However

before that, learned GP Ms.Shah submitted that historically gambling has been prohibited all throughout since vaidhik times as even at that time, it was

considered on the basis of the value and virtues. For that purpose, learned GP Ms.Shah referred to the judgment of the Honâ??ble Apex Court in

case of State of Bombay Vs. R.M.D. Chamarbaugwala & Anr., reported in AIR 1957 SC 699. She pointedly referred to the scripture, which have

been quoted by the Honâ??ble Apex Court in Mahabharat as well as Manu. She further submitted that even in religion like Buddhism, Islamic,

Christianity etc., gambling has not been approved. She submitted that underlying philosophy is that by gambling, moral fabric is eroded, which will have

consequence on the social life. She submitted that therefore even on principle applicable at that time, it has not been approved and, therefore by

passage of time, law has been enacted, by which, gambling has been prohibited. Learned GP Ms.Shah therefore submitted that even before 100 years,

there was some kind of State restrictions. Learned GP Ms.Shah submitted that as per the Constitution, Schedule â?? VII, List â?? II, which is

referring to the State list Entry 34, it has been providing for making law by the State in respect of gambling.

14. Learned GP Ms.Shah, therefore, referred to the provision of the Gambling Act, particularly, Section 3, which refers to the game. She submitted

that it is an inclusive definition provided for restriction and regulation of any such game prize etc. She submitted that provision of Section 13 of the

Gambling Act is providing for exception that it shall not have any application to a game of mere skill wherever played. Again learned GP Ms.Shah

referred to the judgment of the Honâ??ble Apex Court R.M.D. Chamarbaugwala Vs. Union of India, reported in AIR 1957 SC 628 and referred to

Paragraph Nos.4, 8, 14, 18, 23, 36 and 42. Learned GP Ms.Shah submitted that even when such game is played with stake and involves betting, it is a gambling.

15. Learned GP Ms.Shah submitted that competition success which does not depend on a substantial degree of skill is now regarded as gambling. She emphasized the observations in Paragraph Nos.36 and 42. Learned GP Ms.Shah submitted that now in this context, subsequent judgments are required to be considered. She referred to the judgment of the Honâ??ble Apex Court in case of Krishnachandra & Ors. Vs. State of M.P., reported in AIR 1965 SC 307 and emphasized the observation made in Paragraph Nos.7, 8 and 9.

16. Learned GP Ms.Shah referred to the judgment of the Honâ??ble Apex Court in case of K. Satynarayana (supra) and submitted referring to the observations made there in, more particularly, Paragraph No.2. She referred to Paragraph Nos.11 and 14 and submitted that reference is made to the video games and discussed about as to how it would be a matter of chance depending upon card open. She therefore submitted that as observed in Paragraph No.17, reports have stated that such games are game of chance and there is no scope of using oneâ??s skill to arrive at the desired result in the game. She emphasized,

â??They were classified as games of chance. By allowing such games, the innocent children and the common public would lose hardâ??earned money.

Machines electronically operated are adjusted in such a way that the player always lose the game since no skill is involved. Machines were tampered with, so that chances of winning by the player was almost an impossibility.â??

17. Learned GP Ms.Shah further submitted that discussion has been made with reference to the fundamental rights claimed under Articles 19(1)(g) and 19(6) of the Constitution of India with regard to the control by the State. She emphasized,

â??In applying the test of reasonableness, the broad criterion is whether the law strikes a proper balance between social control on the one hand and the right of the individual on the other hand. The court must take into account factors like nature of the right enshrined, underlying purpose of the restriction imposed, evil sought to be remedied by the law, its extent and urgency, how far the restriction is or is not proportionate to the evil and the

prevailing conditions at that time. In order to determine reasonableness of the restriction, regard must be had, as stated earlier, to the nature of the business and the prevailing conditions in that trade or business which would differ from trade to trade. No hard and fast rules concerning all trades etc. could be laid. The State, with a view to prohibit illegal or immoral trade or business injurious to the public health or welfare, is empowered to regulate the trade or business appropriate to the conditions prevailing in the trade/business. The nature of the business and its indelible effect on public interest etc. therefore, are important elements in deciding the reasonableness of the restriction. No one has inherent right to carry on a business which is injurious to public interest. Trade or business attended with danger to the community may be totally prohibited or be permitted subject to such conditions or restrictions as would prevent the evils to the utmost.â??

18. She therefore submitted that as observed, when it is a game of pure chance or manipulated by tampering with the machines to make it a game of chance, even acquired skills hardly assist a player to get extra tokens. She therefore submitted that regulations or restrictions imposed in public interest and right under Article 19(1) (g) of the Constitution of India is not violated. She further emphasized referring to the observations made in Paragraph No.20, â??If its exhibition is found obnoxious or injurious to public welfare, it would be permissible to impose total prohibition under Article 19(6) of the Constitution. Right to life under Article 21 does protect livelihood, but its deprivation cannot be extended too far or projected or stretched to the avocation, business or trade injurious to public interest or has insidious effect on public morale or public order.â??

19. She, therefore, submitted that one cannot claim fundamental right to carry on trade and business, which is prohibited by the Legislature by the statute like Gambling Act. She also referred to the judgment of the Honâ??ble Apex Court in case of M.J. Sivani & Ors. Vs. State of Karnataka & Ors., reported in (1995) 6 SCC 289 and referred to the observations made in Paragraph Nos.18, 19, 20, 29 and 30.

20. Learned GP Ms.Shah also referred to the judgment of the Honâ??ble Apex Court in case of Dr. K.R. Lakshmanan (supra) and emphasized the observations made in Paragraph Nos.19, 20 and 26. She emphasized the observation made in Paragraph No.20 and 23 and emphasized,

â??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 application to competitions in which success does not depend to any substantial extent on skill.

21. Learned GP Ms.Shah referring to the observation made in Paragraph No.26 of the judgment of the Supreme Court of America has submitted that

the reasons are stated as to why the horseÂ?racing in a race course is not gambling.

22. Learned GP Ms.Shah also referred to some of the material to emphasize that how the gambling is considered as pernicious in other countries and

other religion. For that purpose, she submitted that history of poker is required to be traced and she referred to the material. Similarly, she submitted

that whether it is performance of skill or not; whether performance of the skill could make or alter the game and whether it is mere a chance, will

have to be considered. She submitted that game can be played with the bank or without bank. If the game involves betting either with bank or with

coin, which a player has to take on payment, it would certainly refer to stake and when the game is actually played, it leaves no role for the

playerâ??s skill. For that purpose, she referred to the papers and submitted as to how the game of poker is played with initial stage of shuffling of

card, which is given to the players. She emphasized that what is relevant is next stage when the cards are kept open and those cards will change the

complexion of the game based on the card held by the player. Therefore it was emphasized that in the process, player does not have to show any skill

as largely it is depending upon the expectation of the card, which is laid there and how it would match with card held by the player already distributed.

This itself would suggest that it is merely a chance that would alter the game or decide the game or win and there is no element of skill involved.

Learned GP Ms.Shah therefore submitted that the submission that the game poker involves a skill is nothing but at the most how a person can pretend

and bluff irrespective of his card, however at that stage also, it is totally depending upon the card, which has been laid over which the player has no

say and, therefore it is merely a game of chance. She referred to definition of â??gamblingâ?? as per Oxford Dictionary as follows :Â?

â??Play games of chance for money; bet.

Take risky action in the hope of a desired result.â??

23. Similarly, she referred to definition of â??gamblingâ? as per Britannic Dictionary and stressed, â??Some games are dull or nearly meaningless

without the accompanying betting activity and are rarely played unless wagering occurs (coin tossing, poker, dice games, lotteries).â??

24. Learned GP Ms.Shah referring to the history of poker again emphasized the observation that origin of game of poker has its origin in game of

Flush, Brag or TeenÂPatti. She submitted that therefore Flush or Brag is the ancestor of the game of poker from which this game has been developed

and in different parts of the world in a country like France, Germany, America, how the game of poker is considered as chance rather than skill.

25. Learned GP Ms.Shah submitted that though the reference is made to some material referring to the game of poker and Expertâ??s opinion,

reference was made to the judgment of the US Court. She submitted that same judgment has been overruled by the Superior Court of Pennsylvania in

case of Commonwealth of Pennsylvania Vs. Walter Leroy Watkins (Criminal Division at No(s).: CPÂ19ÂCRÂ 0000733Â2008). She referred to this

judgment at length and emphasized exactly how the game of poker is played and whether it involves the skill of a player or it is largely depending upon

the chance. She emphasized that Paragraph No.3 referring to the game of Texas Holdâ??em Pokerâ?? in a garage under the control of Appellees.

She submitted that three element of gambling under the Pennsylvania Law are consideration, chance and reward. She emphasized how the game of

poker is played as stated in Texas Holdâ??em Pokerâ?? and emphasized the observation,

â??They further stipulated that elements one and three were present because, to participate in the game, the players had to wager money, and, if they

won the game, they were rewarded with money. Id. at 20. The parties agreed that the controlling question for the trial court was whether the element

of chance predominates over skill in the game of Texas Hold â??Em Poker.â??

26. Therefore, learned GP Ms.Shah submitted that the present petitions may be dismissed.

27. In rejoinder, learned Senior Counsel, Shri Mihir Thakore again referred to the judgment of the Honâ??ble Apex Court in case of R.M.D.

Chamarbaugwala (supra) and again emphasized the observation made in

Paragraph No.23,

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.

28. Therefore, learned Senior Counsel, Shri Mihir Thakore submitted that the principle which will be applicable, is whether it is a game with substantial

degree of skill or not. Again referring to the observation made in Paragraph No.18, he emphasized that what has been emphasized is "substantial

degree of skill". Learned Senior Counsel, Shri Thakore, therefore, strenuously submitted that the issue with regard to the Amended Act of Madras

Act was considered and it was struck down on the ground that principle of severability is inadmissible. He, therefore, submitted that it has to be

considered in background of the facts as well as relevant statute. Similarly learned Senior Counsel, Shri Thakore referred to the judgment of the

Hon'ble Apex Court in case of K. Satynarayana (supra) and submitted that as observed, the Court has discussed that the game of Rummy is not

a game entirely of chance like "three-card" game mentioned in a Madras case. He, therefore, submitted that when even batting is a part of a

game, it is a skill inasmuch as even for the purpose of batting, person or a player will have to use the skill like assessing rival players' reaction

while keeping your own reaction concealed as poker face and making other players to play further and bat. He submitted that how to play and making

assessment with every turn of the card or fall of the card is a skillful play of the game. He, therefore, tried to submit that to the extent that there is an

element of chance because distribution of the card is not according to any set pattern but thereafter even while batting how the person plays, is a skill.

Learned Senior Counsel, Shri Thakore submitted that psychological assessment of others playing in the game is a skill. He again referred to the

manner in which the game of poker is played to support his contentions as to how the skill could be utilized. He submitted that game starts with three

card but there is skill involved thereafter and it is also a skill in judging and deciding as to whether to continue or not. Similarly, learned Senior Counsel,

Shri Thakore referred to the judgment of the Hon'ble Apex Court in case of Dr. K.R. Lakshmanan (supra) and submitted referring to the

observations made in Paragraph No.26 that as observed in that judgment with reference to horse racing that even for batting, exercise of judgment is

a matter of skill. He emphasized that even in horse racing, winning horse is not determined by chance alone. Again he referred to this aspect with

details as to how even batting would require same amount of discretion and skill.

29. Learned Senior Counsel, Shri Thakore also submitted that the judgment of USA and other countries like UK may also have to be considered

keeping in mind that there are licensed places and issue in those cases was with regard to the situation when the place was unlicensed. He, therefore,

submitted that the judgment may be considered and may be *pari materia* but it has to be considered according to our condition. He referred to the

judgment in case of *Joker Club Vs. Hardin*. He submitted that it has been observed referring to the statutory provision that it would be contrary to the

intention of the Parliament. He submitted that Texas Hold'em Poker has been described as follows :

“The game is usually played with at most 10 (and at least 2) players. Like most variants of poker, the objective in hold'em is to win pots, where

a pot is the sum of the money bet by all players in a hand. A pot is won either at the showdown by forming the best five card poker hand out of the

seven cards available, or by betting to cause other players to fold and abandon their claim to the pot. The objective of a player is not to win the

maximum number of individual pots, but rather to make mathematically correct decisions in order to maximize the expected net amount won in the

long run.”

30. Learned Senior Counsel, Shri Thakore therefore referring to the judgments about the game of poker submitted that in a judgment in the Court of

Pennsylvania had an occasion to consider this very issue. He emphasized the observation made,

“Neither a statute nor case law specifically addresses the legality of Texas Hold'em Poker. To resolve this appeal, we must first determine

whether Texas Hold'em Poker is gambling. If so, then we must decide whether it is “unlawful” as that term is used in § 5513.

10 There are three elements to gambling: consideration, chance, and reward. *Commonwealth v. Two Electronic Poker Game Machines*, 465 A.2d

973, 977 (Pa. 1983). As noted, the parties agreed that both consideration and

reward have been established by the Commonwealth's evidence.â??

31. Learned Senior Counsel, Shri Thakore therefore, strenuously submitted that poker is a game of skill, luck and psychology and also combination

thereof and also submitted that unlike Casino game, they rely upon not entirely upon luck and winning poker requires a skill. Learned Senior Counsel,

Shri Thakore submitted that a person with his skill like assessing and judging other players's game with poker face and also with mathematical

assessment with every change of situation by change of card or fall of card would bat, which in turn is a skill. He therefore submitted that the skillful

player can change his skill to his favour by using his position and thereby increase the chance of winning and that is where the skill is involved. He

pointedly referred to the observation,

â??The academic studies and the experts generally agree that a player must be skillful to be successful at poker. At the outset, chance is equally

distributed among the players. But the outcome is eventually determined by skill. Successful players must possess intellectual and psychological skills.

Thus must know the rules and the mathematical odds. They must know how to read their opponents 'tells' and styles. They must know when to

hold and fold and raise. They must know how to manage their money.â??

32. Learned Senior Counsel, Shri Thakore also referred to the judgment in case of R Vs. Kelly, reported in [2008] EWCA Crim 137 and submitted

that game may involve both chance and skill and, therefore merely because there is some element of chance, it does not become a gambling. He

submitted that a game which is not purely of a skill but also having an element of chance, cannot be construed as gambling. He emphasized referring

to the provisions of the Gambling Act, 1968 and submitted that it has been observed,

â??..... It is clear that Parliament could have adopted a test of preponderance; it did not and we see no reason to write into the Act a further restriction or qualification which Parliament could easily have included but which it did not.â??

33. Learned Senior Counsel, Shri Thakore also referred to the judgments like Brazil judgments and other judgments of Australian Court of Law and

submitted that it has to be considered with reference to the conditions prevailing in India as well as legal position in India including the judgments

interpreting the statutory provision of law. He fairly submitted that batting is a part of game and batting is not prohibited in a game of skill and batting is not gambling per se and it would not make it gambling.

34. In rejoinder, learned Senior Counsel, Shri Raju referred to the judgments of the Honâ??ble Apex Court in case of M/s. North Bihar Agency &

Ors. Vs. State of Bihar & Ors., reported in (1981) 3 SCC 131 and submitted that it is in violation of principles of natural justice. Learned Senior

Counsel, Shri Raju submitted that before passing impugned communication/order, no opportunity of hearing has been given. He submitted that the

Commissioner has to indicate by reasons as to how he has decided it to be a game of chance. He submitted that no material has been furnished and,

therefore, the order passed by the authority cannot be impressed or explained by filing affidavit. Learned Senior Counsel, Shri Raju also referred to the

judgment of the Honâ??ble Apex Court in case of the Siemens Engineering and Manufacturing Co. of India Ltd. Vs. the Union of India & Anr.,

reported in (1976) 2 SCC 981. He again referred to the observations made in Paragraph No.6 and submitted that charge must be supported by

reasons and there is no basis as to how it could be concluded that it is a game of chance.

35. Learned Counsel, Shri Syed referred to the judgment of the Honâ??ble Apex Court in case of K. Satyanarayana (supra) and submitted that

Rummy is not considered as entirely game of chance. He therefore emphasized the word â??entirelyâ? and submitted that this word is important

when the game involved chance as well as skill. Learned Counsel, Shri Syed submitted that what has been considered is whether it is a predominantly

a game of chance, which may fall in gambling stating that the judgments in other countries like USA and UK may have to be considered with

reference to the Indian law, wherein interpreting the statutory provision, the Honâ??ble Apex Court has considered the test of predominance. He

therefore submitted that if it is not predominantly a game of chance and if the skill is also required then, it would be outside the scope of gambling.

36. Learned Government Pleader, Ms. Shah in rejoinder again referred to the judgment of the Honâ??ble Apex Court in case of R.M.D.

Chamarbaugwala (supra) and submitted that in the said judgment, it has been observed,

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 application to competitions in which success does not depend to any substantial extent on skill.

37. Learned Government Pleader, Ms. Shah also referred to the judgments in support of her submissions. Similarly, she referred to the judgment of the

Honorable Apex Court in case of R.M.D. Chamarbaugwala (supra) and emphasized the observations made in Paragraph Nos.42 and 44. She

submitted that the judgments in the US Court have also been considered and very issue with regard to the gambling and batting have been discussed

and, thereafter, it has been observed and quoted as under:

42. It will be abundantly clear from the foregoing observations that the activities which have been condemned in this country from ancient times

appear to have been equally discouraged and looked upon with disfavour in England, Scotland, the United States of America and in Australia in the

cases referred to above.

We find it difficult to accept the contention that those activities which encourage a spirit of reckless propensity for making easy gain by lot or chance,

which lead to the loss of the hard earned money of the undiscerning and improvident common and improvident common man and thereby lower his

standard of living and drive him into a chronic state of indebtedness and eventually disrupt the peace and happiness of his humble home could possibly

have been intended by our Constitution makers to be raised to the status of trade commerce or intercourse and to be made the subject-matter of a

fundamental right guaranteed by Art. 19 (1) (g).

We find it difficult to persuade ourselves that gambling was ever intended to form any part of this ancient country's trade, commerce or intercourse to

be declared as free under Art. 301. It is not our purpose nor is it necessary for us in deciding this case to attempt an exhaustive definition of the word

'trade', 'business' or 'intercourse'.

38. Learned Government Pleader, Ms. Shah further emphasized the observations

made in Paragraph No.44 and emphasized the observation,

44. We also arrive at the same result by applying the doctrine of 'pith and substance'. As Lord Porter pointed out:

The phrase raises in a convenient form an appropriate question in cases where the real issue is one of a subject matter and it may also serve a useful

purpose in the process of deciding whether a particular enactment is a law with respect to trade, commerce or intercourse as such or whether it is a

law with respect to some other subject which incidentally trenches upon trade, commerce and intercourse.

39. Similarly, learned Government Pleader, Ms. Shah referred to the judgment of the Hon^{ble} Apex Court in case of K. Satynarayana (supra) and

reiterated her submission referring to the manner in which the game of poker is played. She submitted that Flush is a game of chance and it is the

same thing as game of poker. She strenuously submitted that any other game played for stakes where predominantly it is a matter of chance as to

how the card is distributed, is a game of chance and not a skill. She submitted that the submissions, which have been made with reference to the

assessment, mathematical assessment or psychological observation cannot be made a game of chance into game of skill and in any case, when it is

admitted fact that all these are considered as skill of batting, it would suggest that it is a game of chance and gambling. She also referred to the

judgment of the Hon^{ble} Apex Court in case of M.J. Sivani (supra). She referred to the observations made in various paragraphs like Paragraph

Nos.13, 14, 17 and 19 and submitted that game of poker is also considered. She emphasized,

“There is no scope for using one's skill to arrive at a desired result in the games like Royal Casino, Super Continental, Five Line, High Low, Black

Jack, Poker Double Up, Skill Ball, Pac Man and Golden Derby. They were classified as games of chance. By allowing such games, the innocent

children and the common public would lose hard^{earned} money.”

40. Referring to the aforesaid observation, learned GP Ms.Shah submitted that though it refers to the poker machine, element or substantial nature of game would remain.

41. Similarly, learned Government Pleader, Ms. Shah referred to the judgment of the Hon^{ble} Apex Court in case of Dr. K.R. Lakshmanan

(supra) and submitted that as observed in this judgment in Paragraph No.27, whether it is a game of chance or skill, ultimately test is outcome.

Learned Government Pleader, Ms.Shah submitted that no person can know how the card would be distributed and, thereafter, the game is played

leaving hardly any skill and, therefore, submission about the assessment or the presentation as skill cannot be considered to be skill as it depends on

nature of the card received by the player, for which, he has no control and it is also admitted that when the cards are distributed, it is a chance.

Therefore, learned Government Pleader, Ms.Shah submitted that so-called strategy, which have been termed as skill, is only a camouflage. She

submitted that poker stands on the same footing as Flush and Brag, which have been considered as a game of chance and, therefore, gambling by the

Honorable Apex Court. Learned Government Pleader, Ms.Shah, therefore, submitted that reference to the details regarding the tournament, which

have been played, would not make it a game of skill merely there is tournament or there is some kind of discussion in the University. She submitted

that reference to the psychological aspect from the probability and what is discussed with reference to the game on principle of probability has nothing

to do with the game as such.

42. Learned Government Pleader, Ms.Shah, therefore, submitted that it is required to be stated that dynamics of the game are changed with every

change or fall of the card and there is no skill involved as it depends upon entirely on the card, which is distributed. She submitted that thereafter how

one plays is not a skill as it may depend upon the trait of a person or how deep his pocket is.

43. In view of these rival submissions, which have been made at length with different perception and angle, it requires consideration. However as

observed in Bhagwat Gita, the issue is with regard to the perception and different colour and shapes, which require a scrutiny with legal observations

and the provisions.

44. Before adverting to the submissions focusing on the issue, it is required to be noted that the vires of the Gambling Act is not challenged nor the

legislative competence has been challenged. It is, therefore, much debate on the communication/ order by the authority, Commissioner of Police, on

the basis of which an issue is sought to be joined that the game of poker is not

covered within the meaning of definition of "gambling" as defined in the Gambling Act. Therefore, the vires of the Act has not been challenged as to whether the game of poker would be covered within the purview of the gambling as defined in the Gambling Act. For that purpose, again much debate has been made on the aspect as to whether it is a game of skill or a chance. Emphasis have been made referring to the judgments of the Hon'ble Apex Court while considering the issue on the game of Rummy or horse racing that the Hon'ble Apex Court has evolved the criteria of "substantial degree of skill" and/or "preponderantly game of skill". Therefore much emphasis has been made that in every game, there may be an element of chance or luck, which would not make it a gambling and regard must be had to whether it involves substantial degree of skill for playing game and if it is a substantial degree of skill with also element of chance or luck, it would be outside the scope and purview of the gambling as defined in the Gambling Act. The submissions have been made also with reference to Article 19(1)(g) of the Constitution of India that the right of the petitioners under Article 19(1)(g) of the Constitution of India to carry on trade or business or commerce has to be protected, which also will have to be considered.

45. It may not be out of place to mention here that now a days, the focus has shifted to many different ways and forms of betting which includes online betting of which sports betting specially cricket betting is very popular. The Oxford Dictionary defines "betting" as the action of gambling money on the outcome of a race, game or other unpredictable event. The word "gambling" is defined as Play games of chance for money; bet; with object bet (a sum of money); take risky action in the hope of a desired result. Now a days, sports betting has started getting approval subject to legal frame work and regulations in different parts of world like Australia, UK, USA. However even in that, there is legal frame work and gambling per se is not approved. However one must not overlook the ground realities in India or the country like India, where the majority of the population is struggling for the basic necessity and there is lack of awareness amongst the people and if they are permitted by betting in the craze of easy money, they do not know what to do if the things go wrong. It is in this situation, perhaps Rugveda and other verse by Manu referred to hereinabove may

even prove right and justify in the present scenario. Therefore as stated above, law regularize the society in democratic country with constitutional

governance like India, which include also directive principle of State policy obliging the State for the governance of the people with the aim and object

of welfare. The Law prohibiting or restricting such activity cannot be said to be unreasonable and when there is no such challenge to the Act itself, the

conveniently raising all issues in the guise of challenging the communication/order of the Police authority cannot be sustained.

46. However, historical background needs to be considered in India as well as abroad. The Honâ??ble Apex Court in a judgment in case of R.M.D.

Chamarbaugwala & Anr. (supra), has made the observation,

â??38. From ancient times seers and lawÂgivers of India looked upon gambling as a sinful and pernicious vice and deprecated its practice. Hymn

XXXIV of the Rigveda proclaims the demerit of gambling. Verses 7,10 and 13 say:

7. Dice verily are armed with goads and driving hooks, deceiving and tormenting, causing grieves woe. They give frail gifts and then destroy the man

who wins, thickly anointed with the player's fairest good.

10. The gambler's wife is left forlorn and wretched the mother mourns the son who wanders homeless. In constant fear, in debt, and seeking riches,

he goes by night unto the home of others.

11. Play not with dice: no, cultivate thy cornland: Enjoy the gain, and deem that wealth sufficient. There are thy cattle there thy wife, O gambler, so

this good Savitar himself hath told me.

The Mahabharata deprecates gambling by depicting the woeful conditions of the Pandavas who had gambled away their Kingdom. Manu forbade

gambling altogether. Verse 221 advises the king to exclude from his realm gambling and betting, for those two vices cause the destruction of the

kingdom of princes. Verse 224 enjoins upon the king the duty to corporally punish all those persons who either gamble or bet or provide an opportunity

for it. Verse 225 calls upon the king to instantly banish all gamblers from his town.

In verse 226 the gamblers are described as secret thieves who constantly harass the good subjects by their forbidden practices. Verse 227 calls

gambling a vice causing great enmity and advises wise men not to practice it even for amusement. The concluding verse 228 provides that on every

man who addicts himself to that vice either secretly or openly the king may inflict punishment according to his discretion.â??

47. In the said judgment, it has also been observed that even English Common Law looked upon it with disfavour and discouraged on the ground of

public policy. It has also been observed,

â??40. As far back as 1850, the Supreme Court of America, in *Phalen v. Commonwealth of Virginia*, (1850) 49 U.S.163 : 12 Law Ed.1030 at p. 1033

(z) observed.

Experience has shown that the common forms of gambling are comparatively innocuous when placed in contrast with widespread pestilence, of

lotteries. The former are confined to a few persons and places, but the latter infests the whole community; icenters every dwelling; it reaches every

class; it prays upon the hard earnings of the poor; it plunders the ignorant and the simple'â??

48. The aforesaid observations have been quoted in a subsequent judgment in case of *Douglas v. Commonwealth Kentucky*, 1897Â168 U.S.488: 42

Law Ed. 553 at p.555(zl), which reads as under :Â?

â??Is the state forbidden by the supreme law of the land from protecting its people at all times from practices which it conceives to be attended by

such ruinous results? Can the Legislature of a State contract away its power to establish such regulations as are reasonably necessary from time to

time to protect the public morals against the evils of lotteries?â??

49. The submission made by learned Senior Counsel, Shri Mihir Thakore referring to the judgments of the USA and UK that there are licensed places

and the Court may consider as to whether the place is not licensed, is required to be considered in background of the facts of the case. Merely

because the Act does not provide for any such licensed area, it does not necessarily by implication take such activity out of the purview of the

gambling. The fact that it is licensed place, which requires a license would itself suggest that otherwise it is prohibited and not permissible. As stated

above, when the Legislature in its wisdom while enacting the aforesaid Gambling Act has not referred to this aspect, it cannot be assumed that it is not

a gambling and, therefore, outside the purview. In fact, it is other way round inasmuch as as stated above, when it was necessary, the Legislature has

provided like in case of horseÂ?racing making it permissible by enacting

provisions of the Bombay Race Course Licensing Act, 1912.

50. Thus it is evident that the activities which have been condemned in this country from ancient times appear to have been equally discouraged and looked upon with disfavour in England, Scotland, the United States of America and in Australia. Therefore underlying purpose of the Legislature sought to be achieved is that the moral fiber of the people is not eroded, which may have bearing on the social fabric leading to ultimate social order and the public interest.

51. Thus while Manu condemned gambling outright, Yajnavalkya sought to bring it under State control but he too in verse 202 (2) provided that persons gambling with false dice or other instruments should be branded and punished by the king. Kautilya also advocated State control of gambling.

Gambling has been prohibited by Manu because it destroyed truth, honesty and wealth and some of lawgivers have advocated for the State control.

It is required to be stated that as observed and quoted in the aforesaid judgment in case of R.M.D. Chamarbaugwala & Anr. (supra), referring to the

judgment in case of of McTiernan, J. of the Australian High Court in King Vs. Connara (1939) 61 C.L.R 596 (M), the observations have been made,

Some trades are more adventurous or speculative than others, but trade or commerce as a branch of human activity belongs to an order entirely

different from gaming and gambling. Whether a particular activity falls within the one or the other order is a matter of social opinion rather than

jurisprudence..... It is gambling to buy a ticket or share in a lottery. Such a transaction does not belong to the commercial business of the country. The

purchaser stakes money in a scheme for distributing prizes by chance. He is a gamester.â??

52. In the aforesaid judgment in case of R.M.D. Chamarbaugwala & Anr. (supra), it has also been observed,

â??The scheme of our Constitution, as already indicated, is to protect the freedom of each individual citizen to carry on his trade or business. This it

does by Art.19 (1) (g). This guaranteed right is, however, subject to Art. 19(6) which protects a law which imposes, in the interest of the general

public, reasonable restrictions on the exercise of the fundamental right guaranteed by Art. 19 (1) (g). Our Constitution also proclaims by Art. 301 the

freedom of trade, commerce and intercourse throughout the territory of India

subject to the provisions of Arts.302&305 which permit the imposition of reasonable restriction by Parliament and the State Legislatures.â??

53. Therefore as referred to in the same judgment in case of R.M.D. Chamarbaugwala & Anr. (supra) with reference to verse judgment particularly with regard to the aspect of license, it has also been clearly observed, â??The fact that regulatory provisions have been enacted to control gambling by issuing licences and by imposing taxes does not in any way alter the nature of gambling which is inherently vicious and pernicious.â??

54. It has also been observed,

â??The purpose of the Act is not to restrict anything which brings the transactions under the description of trade, commerce or intercourse. In other words, the Act is in pith and substance an act with respect to betting and gambling. To control and restrict betting and gambling is not to interfere with trade, commerce or intercourse as such but to keep the flow of trade, commerce and intercourse free and unpolluted and to save it from anti-social activities.

In our opinion, therefore, the impugned Act deals with gambling which is not trade, commerce or business and, therefore, the validity of the Act has not to be decided by the yardstick of reasonableness and public interest laid down in Arts. 19(6) and 304. The appeal against the stringency and harshness, if any, of the law does not lie to a Court of law.â??

55. The submission made by learned advocate, Shri Syed that the petitioners are having fundamental rights, which cannot be denied without any authority of law and it has to be shown that the game of poker is a gambling covered under the definition of Gambling Act, is misconceived. The authority has to implement the law and it is for the petitioners to establish that it is not a gambling and till the finding is given that the poker is not a game of chance or gambling, the authorities are within their right to implement the Gambling Act in exercise of statutory duty. It is again required to be stated that the petitioners have not conveniently challenged the validity of the Gambling Act and are only joining an issue with regard to the order/communication by the authority contending that it is a game of skill and, therefore, the authority should not prohibit without any justification.

56. Therefore ultimately in light of the observations and analysis made by the

Honâ??ble Apex Court in the aforesaid judgment in case of R.M.D.

Chamarbaugwala & Anr. (supra) as well as in case of K. Satyanarayana (supra), whether the game of poker can be said to be a game of substantial degree of skill or not has to be considered.

57. Therefore, the Honâ??ble Apex Court evolved and applied the test of substantial degree of skill. In a subsequent judgment of the Honâ??ble

Apex Court in case of R.M.D. Chamarbaugwala (supra), where the validity of the Section 12A of the Bombay Lotteries and Prize competitions

Control and Tax Act fell for consideration of the Honâ??ble Apex Court, it has been specifically emphasized on the test of â??substantial degree of skillâ?? and has made observation,

â??It is 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 exercise of skill.

58. Therefore, the moot question which is required to be answered is whether a game of Texas Holdâ??em Poker is a game of substantial degree of

skill or a chance. While considering the nature and character of the game and manner in which it could be played, it has been discussed and

extensively submissions have been made, which are reflected hereinabove. However for that purpose, it is required to be noted that the history of

poker clearly suggests that it was a game of chance. The judgment of the foreign countries and some articles would clearly suggest that it had

originated from the game of Flush which is purely referred to as â??Teen Pattiâ?? here in India. Teen Patti has originated from Brag and both poker

and Brag have same root with slight modification or variation. Therefore as the poker and Teen Patti have originally roots in the Brag and straight

poker, they are played and it is evident that the chance is dominant factor in the game. The Honâ??ble Apex Court has also considered the same

issue and has observed that Flush, Brag and Teen Patti are the game of chance. Therefore as a necessary corollary, poker as its variant must also fall

in the category of the game of chance. For that purpose, considering the nature and character of game of poker and manner in which it is played, it is

required to note that it is a game of poker, which starts with distribution of three preflop card and game proceeds when the cards are turned or

opened. Thus it has two stages i.e. initial stage of distribution of cards over

which there is no control and later stage of the game, where the cards are opened with batting and it is in the process, complexion of the game changes with every turn of the card and betting. This has been considered to be a game of skill, which has been much emphasized by learned Senior Counsel, Shri Mihir Thakore that even assessing or judging the rival player with poker face and some calculation or strategy is a matter of skill. Though the submissions have been made with reference to the probability with much details to emphasis that the skill involved in judging or assessing the game or other players in the poker face to induce other players to bat, this would reflect that it is merely a game of chance much depends on the card one gets at the time of distribution and over which, one has no control. It is based on the card he has received and even if one may play, if he has bad day with bad card, he cannot help and cannot turn around the table. All that he can do is, restrict his game and loss of money on such a day. Therefore the submission about the skill involved in judging other players with poker face with strategy of inducing them to play and bet more, cannot be said to be a skill. Further much depends on individual personality, his upbringing and his attitude in life as well as circumstances. For example, a person with good luck and/or money may have more temptation or inducement to play game even if he has average card. On the other hand, a person with consecutive upbringing with lesser amount of money would be slow while betting. Thus it will depend how deep pocket one is having on that day and/or flow of money. Therefore two stages like initial stage i.e. distribution of card where the players have no control or say and it is merely a luck or chance as to how the cards are received, is all chance. Next state when the cards are opened and bats are made, the person may bet or fold. Therefore whether to induce others with poker face to bet, would be a part of bluffing or deception and so called strategy or moved, cannot be termed as skill as it is not a game of skill but it is a game of deceiving, bluffing and duping other players. Further if it is accepted as bluffing and such strategy as a skill then a person with ill design to misguide and deceiving people, could be considered as skill or art though it would amount to an offence under the Indian Penal Code or other statute. If the submissions have to be accepted then many such act or conduct apart from morality even legally not accepted or prohibited, could be said to be a skill. For example, one pretends and holds out

to the people inducing to invest money and then dupe them, would attract an offence under the provisions of the Indian Penal Code including fraud and cheating and it would involve the element of bluffing and cheating, which cannot be said to be a skill. Thus essentially and practically, true test of substantial degree of skill requires a further scrutiny and examination that whether by such substantial degree of skill, a player has control over the game or whether he can change the game to his advantage.

Answer is to be negated.

59. In the ultimate analysis, it cannot be concluded that every game may have some element of skill and some element of chance. Therefore the

Honâ??ble Apex Court has evolved and applied the test of substantial degree of skill. Meaning thereby, it is the predominance of skill over the

chance, which will prevail and/or control the outcome of the game. The assessing and applying this very test to the game of Texas Holdâ??em Poker

will fall short of the fulfillment of the required criteria of predominance or substantial degree of skill as discussed above. Thus there are reasons why

the term â??bad luckâ??, â??bad beatâ?? and â??unlucky streakâ?? exist.

60. Moreover, reliance is placed on the observations of the Honâ??ble Apex Court referring to the game of Rummy. It is required to be restated that

the game of Rummy has been accepted as a game of skill and it has nothing to do with the stake. Whereas the game of poker is a game of gambling

card, which unnecessarily involves betting as it is an inseparable part of the game play. It is this element which is making the game of Rummy a

different from the game of poker. It is in this background, the observation made by the Honâ??ble Apex Court that the principle and criteria involved

with regard to the substantial degree of skill referring to the game of Rummy would stand on different footing than the game of Texas Holdâ??em

Poker, which would fall short of the observations and criteria laid down by the Honâ??ble Apex Court as discussed above. A useful reference can

be made to the observation made by the Honâ??ble Apex Court in case of K. Satynarayana (supra), wherein it has been observed,

â??12. 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 'threeÂ 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 as it did.â??

61. Therefore the issue that even it is a game of skill but played with stakes, may be considered as gambling. These two relevant aspects or the tests

will have to be born in mind.

62. In other words, it is mere kind of strategy like skill versus strategy and so-called skill starts only after the distribution of the cards. As stated

above, in a game of poker with poker face inducing other and/or misguiding others to bet cannot be considered as a skill. Therefore it is in this

background, the provision of the statute viz., the Gujarat Prevention of Gambling Act, 1887 has to be considered for the purpose of deciding as to

whether the game in question of Texas Hold'em Poker is a game of skill or chance and, therefore, would be covered by exception of the Act as

canvassed. Again for that purpose, the game of Texas Hold'em Poker has to be considered with background of the nature and character of the

game, manner in which it is played. Therefore at the end of analysis, moot question is whether it is satisfying the test evolved regarding the

â??substantial degree of skillâ?? and also with reference to the aspect of game played with stakes.

63. One more aspect which is required to be considered is the reliance placed by

learned Senior Counsel, Shri Thakore and learned Senior Counsel, Shri Raju on the foreign judgments and also some articles and material that the poker is a game of skill and it is also taught in the University. The emphasis was on the probability and the psychology. However it is required to be stated that as there is some article which gives as case study or has reference about some material for the probability or the psychology cannot ipso facto take the game out of the purview of the Act like Gujarat Prevention of Gambling Act, 1887 when the definition clearly provides for the nature of game. Simple example could be given that even in the University or the law faculty school, some case study are being discussed with reference to the hypothetical facts and the arguments to discussed and apprise as to whether it would fall in the category of an offence of particular nature. However on such basis, it cannot be a matter of an argument that because such kind of studies or articles suggest that a particular conduct is not considered as an offence and, therefore, even in a given case, analogy should be drawn that it is not an offence though covered as an offence under the Law. Thus much depends upon the information and game which is played with incomplete information and incomplete idea and so-called skill or skill of assessment with poker face cannot be considered as skill. Further as discussed, it may have depend on individual perception depending upon his aptitude and perception in the life. In the same way, the judgment of the Court of United States, District Court, New York in case of United States of America Vs. Lawrence Dicristina relied upon by learned Senior Counsel, Shri Mihir Thakore has been reversed in the Appeal by the higher Courts. In the said judgment, it has been clearly observed that the parties do not dispute that poker constitutes gambling under the New York State law. Further it has also referred to the game of poker that the game of poker contains sufficient element of chance to constitute gambling under that State's law. Reference is made to other judgments of the District Court of New York State with different games like poker or blackjack. Same contentions were considered that the poker or blackjack which require considerable skill in drawing particular card and still it has been held to be a game of chance since outcome depends to a material degree upon the random distribution of card. It has been specifically observed, "The skill of the player may increase the odds in the player's favor, but

cannot determine the outcome regardless of the degree of skill

employed. There is no doubt that playing "stud" poker for money is a game of chance and "constitutes gambling."

64. Again in a judgment in case of R Vs. Kelly, reported in [2008] EWCA Crim 137, same issue as to whether Texas Hold'em Poker is a

gambling or is a game of skill, was considered. It has been discussed as to whether it is a game of skill. In the said judgment, the Court of Appeal had

occasion to consider this very issue and emphasized as to whether it is predominantly a skill over the chance in such game. The Court had also

considered about the game of bridge and observed that the element of skill has far outweighs any element of chance. However referring to the game,

it has been observed,

"The meaning of a game of chance set out in s 53(1) of the 1958 Act is not by its terms an exhaustive definition, as the word "include" is

used. However, it does not seem to us that this was intended by Parliament to enable a more restrictive definition to be given. It is clear that

Parliament could have adopted a test of preponderance; it did not and we see no reason to write into the Act a further restriction or qualification

which Parliament could easily have included but which it did not.

In our view, the definition in the Act is in simple terms and needed little elaboration; it was a question of fact for the jury to determine whether on the

statutory definition TH poker was a game of chance."

65. In that judgment, it has also been observed,

"There was in our view therefore no misdirection in the summing up. The jury were on the evidence plainly entitled to conclude that the game of

TH poker was a game of chance as defined by the 1968 Act."

66. Much reliance placed by learned Senior Counsel, Shri Mihir Thakore as well as learned Senior Counsel, Shri Raju referring to some material

including the articles or writing "Towards the Legalization of Poker: The Skill Vs. Chance Debate" also would not help the case of the petitioner.

The submissions made by learned advocates with much stress on the aspect of skill cannot be accepted as discussed hereinabove. Moreover in some

articles, it has been clearly stated that the control or outcome in the game of poker has to be considered. One more article relied upon by learned GP

Ms. Shah i.e. "Is Poker a Game of Skill or Chance? A Quasi-Experimental Study", which has referred to various judgments.

Therefore, reference made to other material including Wiki pedia with the meaning of word "chance" and "skill" has to be apprehended and

considered in context of the background of the facts. Therefore while considering the issue as to whether the game would amount to gambling or not,

one may have regard to the context in which it is to be used and considered and nature of game have to be considered in the wordings of Justice

Holmes.

67. Another facet of submissions, which have been made by learned Senior Counsel, Shri Mihir Thakore and learned Senior Counsel, Shri Raju that

the rights of the petitioners under Article 19(1)(g) of the Constitution of India are affected and they have right to trade and commerce, which is

required to be protected. However for that purpose, a useful reference can be made to the judgment of the Hon'ble Apex Court in case of

R.M.D. Chamarbaugwala (supra). In the said judgment, the Hon'ble Apex Court has clearly observed, "trade and commerce protected by

Article 19(1)(g) and Article 301 are only those activities which could be regarded as lawful trading activities, that gambling is not trade but res extra

commercium, and that it does not fall within the purview of those articles."

68. Thus it specifically carves out horse racing when such wagering or batting takes place. However it needs to be emphasized that a close look at

this very definition makes it very clear that the wagering or batting qua horse racing is taken out because a special license is issued under the

provisions of the Bombay Race Course Licensing Act, 1912 in respect of such race course. Therefore the definition provides "gaming" to

include "wagering" or "batting" except horse racing for the purpose as stated above provided with the license under the Bombay Race

Course Licensing Act, 1912. It is in this background, the moot question which is required to be considered is whether the game of Texas Hold'em

Poker can be said to be a game of chance or skill. It is required to be stated that what we are focusing is with regard to the variant of poker game

known as "Texas Hold'em Poker" and not other variant. Further the provisions of the Bombay Prevention of Gambling Act, 1887 was

enacted for the purpose of the prevention of gambling in the erstwhile State of

Bombay which now include both State of Maharashtra and State of Gujarat after the bifurcation and reorganization of the States. The provisions of the Bombay Prevention of Gambling Act, 1887 was adopted and made applicable to the State of Gujarat and, therefore, these provisions as stated above are made as it falls in the Entry 37 of List II in the 7th Schedule of the Constitution of India, where it is falling in the State list and, therefore, each State Legislature is empowered to frame the laws. Article 246 of the Constitution of India referred to the legislative power between the Union and the State Legislatures and the distribution of such power is to be found in 7th Schedule of the Constitution. "Gaming" and "Batting" and present Act therefore would fall within Entry No.34 of List II in the 7th Schedule. List II of 7th Schedule, which would empower the State Legislature to legislate with respect to the subject matter and accordingly, the State has made the aforesaid law like all the States have made barring few who may have considered it as not gambling like in the State of West Bengal, which would be referred to hereinabove. However there are whole list of the States having made similar provision. It is in this background, what we have to consider is the provision of the law viz., the Gujarat Prevention of Gambling Act, 1887 made by the State of Gujarat vis-à-vis the game of Texas Hold'em Poker. It would not be relevant as to whether few States have not considered it as gambling or prohibited activity. However considering the scheme of Constitution as referred to hereinabove where the State Legislature is empowered and has made the law, where it could be said to be violating any fundamental rights of the petitioner. Again it is required to be stated that the Legislative competence or vires of the Act viz., the Gujarat Prevention of Gambling Act, 1887 has not been challenged and, therefore, the issue will have to be considered with reference to the nature and character of the game of Texas Hold'em Poker and manner in which it is being played suggesting whether it could be termed as game of skill or chance. Therefore a useful reference can be made to the observation made by the Hon'ble Apex Court in case of Chamarbaugwala (supra), wherein reference is made to Entry No.34 and the legislative competence. In the said judgment, it has been observed,

44. The freedom secured by the two Articles, we think, implies that no unreasonable restraint or burden shall be placed upon an act

failing under that description because it is trade or commerce or intercourse. We have analysed the provisions of the impugned Act and it is quite clear

that the Act does not purport directly to interfere with trade, commerce or intercourse as such, for the criterion of its application is the specific

gambling nature of the transaction which it restricts.

The purpose of the Act is not to restrict anything which brings the transactions under the description of trade, commerce or intercourse. In other

words, the Act is in pith and substance an act with respect to betting and gambling. To control and restrict betting and gambling is not to interfere with

trade, commerce or intercourse as such but to keep the flow of trade, commerce and intercourse free and unpolluted and to save it from anti-social

activities.

In our opinion, therefore, the impugned Act deals with gambling which is not trade, commerce or business and, therefore, the validity of the Act has

not to be decided by the yardstick of reasonableness and public interest laid down in Arts. 19(6) and 304. The appeal against the stringency and

harshness, if any, of the law does not lie to a Court of law.

45. xxx xxx xxx

46. xxx xxx xxx

47. The prize competitions being of a gambling nature, they cannot be regarded as trade or commerce and as such the petitioners

cannot claim any fundamental right under Art. 19 (1) (g) in respect of such competitions, nor are they entitled to the protection of Art. 301.â??

69. As stated above, in case of R.M.D. Chamarbaugwala (supra) referring to the ancient history, Rigveda, Manu and Mahabharat, the Honâ??ble

Apex Court has repudiated the contention that the condemnation of the gambling was not universal with specific reference to the decision of the USA,

Australia, Canada and England Privy Council. Therefore once it is accepted that the gambling is an evil and the gambling houses flourish and,

therefore, when the detection of the gambling is difficult, law to root out gambling is necessary in a public interest and the constitutional validity of such

laws have been upheld including the judgment of the Honâ??ble Apex Court in case of Krishnachandra (supra). It appears that in the said judgment,

focus was on the burden of proof of reasonableness and restriction and the position of such articles like cards, dice etc. The Honâ??ble Supreme

Court negated those contentions and observed that such an Act provides safeguard against victimisation of innocent persons and, hence, the question of reasonableness and restriction does not arise once the Article 19(1)(g) of the Constitution of India could not be invoked. As observed and quoted hereinabove in case of R.M.D. Chamarbaugwala (supra), the activities are not trade and commerce as protected under Article 19(1)(g) of the Constitution of India. A useful reference can be made to the judgments which upheld the Prohibition Act or the Berar Prohibition Act in case of Sheoshankar Vs. State, reported in AIR 1951 Nagpu r646, wherein it has been held, "..... the C.P. and Berar] Prohibition Act, 1938, did not violate Art. 19(1)(f) because the legislature having come to the conclusion that the consumption of intoxicating liquor was not in the public interest, intoxicating liquor must be regarded as a noxious object and it ceased to be a legitimate object of "property" or of "commerce".

70. The Court had cited American decision, where the US Supreme Court also held that the prohibition upon the use of property for purposes that were declared by valid legislation to be injurious to the health, morals and safety of the community was within the power of the State which could declare that any place kept and maintained for the illegal manufacture and sale of intoxicating liquors shall be deemed a common nuisance and could be abated. Further when the business was extinguished as noxious under the Constitution, there is no question of compensation and the property like whisky removed from prohibited channels of transaction and distribution and were subjected to seizure, which could not be a matter of article of commerce. The Hon'ble Apex Court in a judgment in case of R.M.D. Chamarbaugwala (supra) has made observation that the crime or inherently vicious activity must not be treated as business or trade within the meaning of Articles 19(1)(f) or 19(1) (g) and 301 of the Constitution of India and could be restricted or prohibited by the competent legislature in a public interest. Ordinary word "business" and "trade" does not include a crime and any activity dealing with article like contraband article cannot be termed as business activity inasmuch as when the Legislature has prohibited the sale or possession of the contraband article for example Charas. One cannot claim activity of sale of such articles as part of his business, which is required to be protected. Similarly, the Prohibition Act prohibiting the possession and consumption of the liquor or Alcohol, which

has also been now to be found in other States, which restrict or prohibit the use and consumption of liquor and could not be question that it curtails the freedom of the person as to what he should consume or what he should not be consumed inasmuch as the State is under an obligation to protect the public interest, which should be viewed in a broad manner. It is required to be stated that so-called freedom and the rights, which have been claimed as fundamental rights, are not in absolute terms but such rights are subject to the reasonable restriction. Therefore the right conferred by Article 19(1) of the Constitution of India are not absolute, which is obvious from the nature of those rights, freedom of speech or freedom of carrying on business also have to be regulated. It is well accepted that the limitation on such rights embodied under Articles 19(1)(a) to (g) are expressly incorporated in Articles 19(2) to (6). The rights represent the claims of the individual, the limitations protect the claims of other individual and the claims of the society or the State. In other words to say that the rights are fundamental rights and the limitations are not is to destroy the balance for which Article 19 of the Constitution of India is designed to achieve. It may be stated that such balance has been maintained while engrafting Article 19 of the Constitution of India in order to achieve balance between the individual rights enjoyed by the individual which are not absolute and to maintain and protect the interest of the society for the orderly society. Thus the restriction may be put on different rights contained in Article 19(1) of the Constitution of India on the ground like in the interest of public order or interest of general public. Thus the rights under Articles 19(1)(a) to (c) and 19(1)(d) to (g) have a reference to reasonableness of the restriction. Therefore while considering the restriction imposed, constitutional criteria is the same viz., reasonableness of such restriction, which in turn would call for the cumulative effect of such restriction in the interest of general public. Thus the activities which are dealing in articles or goods which are *res extra commercium*, could not have been intended to be permitted in the first instance by Article 19(1)(f) and (g) relating to the fundamental rights to property, trade or business, or by Article 301 relating to the freedom of trade and commerce, with permission to the State to restrict or prohibit them.

71. Aforesaid judgment in case of R.M.D. Chamarbaugwala (*supra*) refers to the provision of the Bombay Lotteries and Prize Competitions Control

and Tax Act, 1948 and it has been observed,

“In our judgment in that appeal, we have held that trade and commerce protected by Art.19 (1) (g) and Art.301 are only those activities which

could be regarded as lawful trading activities, that gambling is not trade but *res extra commercium*, and that it does not fall within the purview of those

Articles. Following that decision, we must hold that as regards gambling competitions, the petitioners before us cannot seek the protection of Art. 19

(1) (g), and that the question whether the restrictions enacted in SS. 4 and 5 and Rr. 11 and 12 are reasonable and in the interests of the public within

Art. 19 (6) does not therefore arise for consideration.”

72. As stated above, whether the liquor is vicious or not, may have a difference of opinion. However in our society, the liquor is looked upon as

inherently vicious. The directive principle, which are fundamental in the governance of the country, requires that the State should endeavour to bring

about the prohibition of consumption of liquor (Article 47). Apart from the Article 47, liquor can be prohibited and such prohibition is maintained and

upheld by the Courts not only in India but even in the countries like United States and Canada that if the thing is vicious, the State may treat the

possession or consumption of the alcohol as a crime and thus divest liquor of its character as property. Therefore the law introducing prohibition of

liquor is not violative of Article 19(1)(f) and (g) of the Constitution of India and also would not violate Article 301 of the Constitution of India. Similarly

such example could be held with reference to the law regarding the money-lending. Therefore suffice it to say that whether the State is obliged under

the scheme of the Constitution or rather obliged by the directive principles of State policy to have the constitutional governance of the country in the

manner which protect the public interest or welfare and if the Legislature in its wisdom has made such law like Prevention of Consumption of Liquor

or the Prevention of Gambling Act by the respective State legislature, it is within the legislative competence under the Constitution to make such laws

by the State Legislature. It cannot be questioned on such a ground of violation of Article 19(1)(g) of the Constitution of India. It is required to be

stated that such question or the issue are not permissible to be raised so long as validity of such laws like the prevention of Gambling Act has not been

questioned or rather upheld. Therefore the moot question which has been raised

conveniently only with reference to the communication by the Police

authority and then to say that it is violative of fundamental rights under Article 19 of the Constitution of India or that the game of poker is not covered

by definition of gambling, is misconceived. A useful reference can be made to the judgment of the Honâ??ble Apex Court in case of the State of

Gujarat Vs. Mirzapur Moti Kureshi Kassab Jamat & Ors., reported in (2005) 8 SCC 534, wherein the Honâ??ble Apex Court has made observations

referring to the fundamnetal rights of a person visÂaÂvis the directive principles. It has been observed referring to Article 37 of the Constitution of

India,

It shall be the duty of the State to apply these principles in making laws"" is not a pariah but a constitutional mandate.â??

73. It has also been observed,

â??For judging the reasonability of restrictions imposed on Fundamental Rights the relevant considerations are not only those as stated in Article 19

itself or in PartÂ?III of the Constitution; the Directive Principles stated in PartÂ?IV are also relevant.â??

74. Therefore when the Legislature has not provided for any licensed area or whether it has not made the provision though the activity is prohibited,

which could be permitted subject to license within the permissible area, the Court cannot add or read into it. In other words, when the Legislature in its

wisdom has not provided for any such licensed area or specific placed with license making it permissible under the Act, it cannot be said that the

Legislature was oblivious of such fact particularly when in case of horseÂracing, there is a specific provision made by the respective State Legislature

like Bombay RaceÂCourses Licensing Act, 1912 providing for such license for such race called at a particular place, where the race should take

place. In other words, such provisions have not been contemplated or made by the State legislature while enacting the provision of the Gambling Act

and it cannot be read into it nor the Court can improvise or alter while interpreting such provision. It is well accepted the rule of interpretation that the

language of the Statute has to be read as it is with its simple and natural meaning unless external aid is required. Further, regard must be had to the

underlying purpose of the Legislature sought to be achieved and while interpreting, it is not open for the Court to add or substitute the wording of the

Legislature. Therefore having regarding the underlying purpose of the Gambling Act for the welfare of the well being of the people, which could be

regarded as public interest, it would not be justified to overlook the statutory provision and/or read something, which is not provided in the statute. The

Honâ??ble Apex Court in a judgment in case of Pathumma & Ors. Vs. State of Kerala & Ors., reported in (1978) 2 SCC 1 has made the

observation,

â??The judicial approach should be dynamic rather than static, pragmatic and not pedantic and elastic rather than rigid. It must take into consideration

the changing trends of economic thought, the temper of the times and the living aspirations and feelings of the people. This Court while acting as a

sentinel on the qui vive to protect fundamental rights guaranteed to the citizens of the country must try to strike a just balance between the

fundamental rights and the larger and broader interests of society, so that when such a right clashes with the larger interest of the country it must yield

to the latter.â??

75. Therefore the submissions made by learned counsel contending that the poker should be held to be a game of skill, cannot be readily accepted nor

it can be accepted that it would be outside the purview of the statutory provision of the Gambling Act. Therefore, the impugned communication/ order

which has been challenged, cannot be set aside. The submissions which have been made referring to the principles of natural justice, are also devoid

of merits as it is not an issue of adjudication by the authority when the Gambling Act provides for prohibition of gambling and the Statute does not

provide for any scheme of license for a limited area like in the USA or other countries and there is no justification and, therefore, the impugned

communication/ order passed by the authority cannot be said to be arbitrary or illegal. Further such an issue cannot be joined that particular game like

poker is not a gambling. Again it requires consideration and interpretation of the statutory provision and, therefore, no fault could be found with the

impugned communication/ order on the ground of violation of principles of natural justice. A useful reference can be made to the judgment of the

Honâ??ble Apex Court in case of Ajit Kumar Nag Vs. General Manager (PJ), Indian Oil Corpn. Ltd., Haldia & Ors., reported in 2005 (7) SCC 764,

wherein it has been observed,

â??The principles of natural justice are not rigid or immutable and hence they cannot be imprisoned in a straitjacket. They must yield to and change with exigencies of situations. They must be confined within their limits and cannot be allowed to run wild. While interpreting legal provisions, a Court of law cannot be unmindful of the hard realities of life. The approach of the Court in dealing with such cases should be pragmatic rather than pedantic, realistic rather than doctrinaire, function rather than formal and practical rather than precedential. It was emphasized that, as observed, the principles of natural justice can be modified and even excluded. Again, it was submitted that the principles of natural justice has to be decided with reference to the facts and circumstances of the case.â??

76. Therefore, the present group of petitions deserves to be dismissed in light of the discussed made hereinabove above and accordingly stands dismissed. Rule is discharged. Interim relief, if any, stands vacated.