HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 20779/2019

Ravindra Singh Chaudhary S/o Shri Gopal Singh Ji Choudhary, Aged About 33 Years, R/o 83, Purohit Ji Ka Bas, Behind Geejgarh House, Hawa Sadak, 22 Godam, Jaipur-302006

----Petitioner

Versus

1. Union Of India, Through Ministry Of Finance, Department Of Revenue, Government Of India, North Block, New Delhi-110001 Through Secretary
2. The State Of Rajasthan, Through Chief Secretary, Government Of Rajasthan, Government Secretariat, Jaipur.
3. Additional Chief Secretary, Home Department, Government Of Rajasthan, Government Secretariat, Jaipur.
4. Additional Commissioner Of Central Goods And Service Tax, Jaipur Zone, Ncr Building, Statue Circle, C Scheme, Jaipur-302005
5. Dream11 Fantasy Private Limited, Through Its Managing Director, 1901, A-Wing, Naman Midtown, Senapati Bapat Marg, Elphinstone-West Mumbai, Mumbai City, Maharashtra-400013

----Respondents

For Petitioner(s) : Mr. Punit Singhvi through VC

For Respondent(s) : Mr. Vikram Nankani, Sr.Adv. with
Mr. Arvind Lakhawat through VC
Mr. H.V. Nandwana through VC
Mr. Karan Bharihok through VC
Mr. Siddharth Ranka through VC
Mr. R.D. Rastogi, ASG through VC
Mr. Rajesh Maharshi, AAG through VC

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL

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JUDGMENT RESERVED ON :: 01/10/2020

JUDGMENT PRONOUNCED ON :: 16/10/2020

BY THE COURT(PER HON'BLE THE CHIEF JUSTICE):

1. This writ petition has been filed in the nature of a Public Interest Litigation, *inter-alia,* alleging that respondent No.5-Dream 11 Fantasy Private Limited provides a platform to its users for playing sports and games on a virtual platform, such as fantasy cricket, football, kabaddi, basketball and hockey. It is asserted by the petitioner that the said virtual platform, namely Dream-11, allow its users to register and play various games, to form their own teams made up of real players for cricket, football, kabaddi and NBA with maximum budget of 100 crores. It is further asserted that users initially have to pay an amount of ₹100/-, out of which 20% is retained by respondent No.5-Dream 11, whereas 80% of the remaining balance is transferred towards the winning amount for the game. It is alleged that the game being played on the aforesaid platform is nothing else but "betting" on the cricket team. It is further alleged that online fantasy sports games are games of chance, thereby constituting illegal act of gambling/ betting and that respondent Nos.1 to 4 are not prohibiting this illegal act.

2. Further, the petitioner prays for action to be taken against the private-respondent No.5 under the Central Goods and Service Tax Act, 2017 (for short, 'the CGST Act') and the Rules made thereunder for evasion of GST. In this respect, it is alleged that the private-respondent No.5 is not paying GST under proper

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classification, which should be @ 28% and only pays 18% GST that too on the amount received from a participant and retained by it, which effectively amounts to evading GST on balance 80% amount, which is transferred towards the winning amount for the game. The petitioner referred to Section 65-B(15) of the Finance Act, 1994 for definition of "betting or gambling", Section 2(13) of the CGST Act for definition of "consideration" and rule 31-A of the Central Goods and Service Tax Rules, 2018 (for short 'the CGST Rules'). The petitioner also referred to Circular No. 27/01/2018-GST dated 04.01.2018 issued in respect of horse racing and on such basis alleges that GST should have been payable on 100% of the amount received. According to the petitioner, out of every ₹100/- received by the private respondent No.5 from the participants, ₹80/- are set aside in an escrow account for the common price pool and same is distributed amongst the winners and on such sum no GST is paid which, is being paid on the remaining amount retained as Platform Fee i.e. ₹20/-. The petitioner also alleges that even on the said actionable claim amount of ₹80/- kept in the escrow account and distributed amongst the winners, GST should be payable by the private respondent No.5, that too @ 28%. In substance, the present PIL seeks action against the private respondent No.5 – Dream 11 by raising two issues, namely:-

(1) Whether online fantasy sports games offered on Dream 11 platform are "gambling/betting" ?

(2) Whether respondent No.5-Dream 11 is wrongly classifying its virtual online game under the wrong entry for

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GST and, therefore, violating Rule 31(A) (3) of the CGST Rules, 2018 in order to evade GST?

3. Respondent Nos. 2 & 3, namely State of Rajasthan and the Additional Chief Secretary, Home Department, Government of Rajasthan have filed a detailed counter affidavit dated 26.08.2020 opposing the PIL stating therein that the PIL petitioner has merely made untenable allegations without any facts and substance. It is further submitted that the Punjab & Haryana High Court in the case of **Varun Gumber Vs. Union Territory of Chandigarh, 2017 Cri LJ 3827,** vide judgment dated 18.04.2017 and the order dated 15.09.2017 passed by the Hon'ble Supreme Court dismissing the Special Leave Petition against the aforesaid judgment have come to hold that the fantasy games of Dream 11 are games of mere skill and their business has protection under Article 19(1)(g) of the Constitution of India. The counter affidavit submitted by the respondent Nos. 2 and 3, further referred to the detailed judgment of the Bombay High Court dated 30.04.2019 in **Criminal Public Interest Litigation Stamp No. 22/2019 - Gurdeep Singh Sachar Vs. Union of India & Ors., (2019) 75 GST 258 (Bombay).** The said PIL challenging the activities of respondent No.5 – Dream-11 as gambling and betting as well as the contention regarding alleged GST evasion was dismissed. These respondents have also referred to the earlier judgment of this Court in **D.B. Civil Writ Petition No. 6653/2019 - Chandresh Sankhla Vs State of Rajasthan, reported in 2020 SCC Online Raj 264,** wherein similar contentions alleging online fantasy sports games offered by respondent No.5 as gambling and

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betting were rejected and, therefore, it was prayed that the petition filed is in essence to personal gain and popularity and no legitimate case has been made out.

4. Respondent No.5 – Dream-11 has also filed a detailed counter affidavit dated 12.08.2020 opposing the PIL. An additional affidavit came to be submitted by the said respondent, which is on record. In the said affidavit, reference has been made to the Federation of Indian Fantasy Sports (FIFS) including its Charter, Ombudsmen Rules, Leadership Team and Self Regulation Guidelines. The aforesaid documents were taken into consideration by the Madurai Bench of the Madras High Court, which was pleased to rely on the aforesaid documents in its order dated 25.10.2019 passed in Criminal O.P. (M.D.)No. 7087/2017. Our attention was drawn towards the SLP (Diary No.) 43346/2019 and 41632/2019 filed by the Union of India impugning the judgment of the Bombay High Court in **Gurdeep Singh Sachar (Supra)** and the orders in this case dated 04.10.2019, 13.12.2019, 31.01.2020 & 06.03.2020 passed by the Hon'ble Supreme Court, 276th Law Commission of India report and show cause on demand notice dated 27.05.2020, issued by the Commissioner of CGST. Reference has also been made to a further detailed judgment dated 18.04.2017 passed by the Punjab & Haryana High Court in the case of **Varun Gumber (Supra),** which, after considering in detail the online fantasy games offered by platform of Dream 11 and relying upon the judgment of the Hon'ble Supreme Court, has come to hold that fantasy games were games of mere skill and that the business of Dream-11 had

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the protection of Article 19 (1) (g) of the Constitution of India and same did not amount to gambling. It was further brought on record that SLP (Diary No.) 27511/2017 filed against the judgment rendered by the Punjab & Haryana High Court came to be dismissed by the Hon'ble Supreme Court vide order dated 15.09.2017. Respondents also relied upon the judgment of this Court in the case of **Chandresh Sankhla (Supra).** It would be relevant to note herein that respondent No.5 pointed in its counter affidavit that in the show cause notice–cum – demand notice dated 27.05.2020, issued by the Commissioner of CGST, it was the contention of the Department that the games offered are games of skill by relying upon the judgment of the Hon'ble Supreme Court in the case of **Dr. K.R. Lakshmanan Vs. State of Tamil Nadu, (1996) 2 SCC 226.**

5. Shri R.D. Rastogi, learned Additional Solicitor General appearing on behalf of respondent-Union of India submitted that the present PIL deserves to be dismissed as it was not maintainable contending that the issue of gambling/betting had already been closed by the Hon'ble Supreme Court in its order dated 13.12.2019 and the only issue kept open was regarding GST. He further submitted that issue of GST has already been raised by the Department in its review petition filed before the Bombay High Court, which is currently pending and insofar as the issue of gambling/betting is concerned, the stand taken by the Department in the show cause notice dated 27.05.2020 issued to the Dream-11 and the submissions made by the learned Additional Solicitor General by relying upon the order dated

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13.12.2019 passed by the Hon'ble Supreme Court, made it clear that nature of business run by the private respondent No.5 was neither gambling nor betting.

6. All the parties represented through their respective counsels were heard through video conferencing and written submissions were filed by respondent No.5.

7. It would be relevant at the outset to take into consideration the fact that common definition of "gambling/betting" relied upon by the PIL petitioner as well as by the Union of India in its SLP filed before the Hon'ble Supreme Court is available in Section 65(B) (15) of the Finance Act, 1994 which reads as under:-

> "***Section 65-B. Interpretations:***
>
> *(15) Betting or gambling means putting on stake something of value, particularly money, with consciousness of risk and hope of gain on the outcome of a game or a contest, whose result may be determined by chance or accident, or on the likelihood of anything occurring or not occurring."*

8. Therefore, it is clear from the above that the test applicable is whether the result of the fantasy game offered by respondent No.5 is determined merely by chance or accident or on the likelihood of anything occurred or not occurred.

9. The Hon'ble Supreme Court has consistently held that the games of skill are distinguishable from gambling and enjoy protection under Article 19(1) (g) of the Constitution of India. Hon'ble Supreme Court in the case of **State of Bombay Vs. R.M.D. Chamarbaugwala & Anr., AIR 1957 SC 699,** also came to hold that competitions which involve substantial skill are not gambling activities and such competitions are business activities

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entitled to protection guaranteed by Article 19(1) (g) of the Constitution of India. It has been held in para 23 as under:-

> *"23. Applying these principles to the present Act, it will not be questioned that competitions in which success depends to a substantial extent on skill and competitions in which it does not so depend, form two distinct and separate categories. The difference between the two classes of competitions is as clear-cut as that between commercial and wagering contracts……"*

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10. While deciding the issue pertaining to the fantasy games offered on the platform of respondent No.5, in the case of **Varun Gumber (supra),** in a reasoned judgment dated 18.04.2017, the Punjab & Haryana High Court analyzed the business model of respondent No.5 in detail and held that the same did not amount to gambling because it was a game of mere skill as opposed to a game of chance. The High Court *inter-alia* noted and favourably considered following important aspect of the fantasy games offered by the respondent No.5 herein:-

> "5. What is a fantasy sports game".
>
> b) *Any fantasy sports game offered by them is a game which occurs over a pre-determined number of rounds (which may extend from a single match/sporting event to an entire league or series in which participating users select, build and act as managers/selectors of their virtual team … … …."*
>
> *6. Requirments of material and considerable skills by the user in 'drafting' of a virtual team and 'playing' fantasy sports game:*
>
> *c) The drafting of a virtual team involves the exercise of considerable skill as the user must first assess the relative worth of each athlete/sportsperson as against all athletes/sportspersons available for selection. The user has to study the rules and make evaluations of the athlete's strengths and weaknesses based on these rules.*

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d) Further, a user's virtual team cannot be entirely or substantially consisting of athletes from a single real-world team. In the case of fantasy cricket and fantasy football games, the Dream-11 rules stipulate that not more than 7 of the 11 athletes in the virtual team may be from a single real-world team.. … ….

f) Therefore, users engaged in participating in Dream-11's fantasy sports read and understand the rules of the game published by Dream-11, and make their assessment of athletes and the selection of athletes in their virtual team on the basis of the anticipated statistics of their selection; for example, in the fantasy cricket game, a user needs to evaluate, in the case of a batsman, … … ….

g) Furthermore, users have to select one player from amongst their virtual team selection as a 'captain' and another player as the 'vice-captain' … … ….

gg) In the course of such selection of teams and making decisions on drafting of players and designated captains/vice-captains, the user must also overcome team biases and prejudices while selecting athletes…."

11. The High Court of Punjab & Haryana not only considered various submissions made by the respondent No.5 herein, but also referred and relied in great details on the judgment of the Hon'ble Supreme Court in **Dr. K.R. Lakshmanan (supra),** while holding as under:-

"19……*Even from the submissions and contentions of respondent-company and factual position admitted in writ petition, I am of the view that playing of fantasy game by any particular user involves virtual team by him which would certainly requires a considerable skill, judgment and discretion. The participant has to assess the relative worth of each athlete/sportsperson as against all athletes/sportspersons available for selection. He is required to study the rules and regulations of strength of athlete or player and weakness also. The several factors as indicated above submitted by the respondent-company would definitely affect the result of the game…."*

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20. The respondent company's website and success in Dream-11's fantasy sports basically arise out of users exercise, superior knowldege, judgment and attention. I am of the further view that the element of skill and pre-dominant influence on the outcome of the Dream-11's fantasy than any other incidents are and therefore, I do not have any hesitation in holding that any sports game to constitute the game of "mere skill" and not falling within the activity of gambling for the invocation of 1867 Act and thus, the respondent-company, is, therefore, exempt from the application of provisions, including the penal provisions, in view of Section 18 of 1867 Act. Equally so, before I conclude, I must express that gambling is not a trade and thus, is not protected by Article 19(1)(g) of Constitution of India and thus, the fantasy games of the respondent-company cannot said to be falling within the gambling activities as the same involves substantial skills which is nothing but is a business activity with due registration and paying the service tax and income tax, thus, they have protection granted by Article 19(1) (g) of Constitution of India."

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It can be safely deduced from these findings that the result of the fantasy games offered by respondent No.5 is not determined merely by chance or accident, but the skill of the participant determine the result of the game having predominant influence on the outcome of the fantasy game. Whether any particular team in the real world match wins or loses, is also immaterial as the selection of virtual team by the participant involves choosing players from both the teams playing in the real world. It is also clear that offering the fantasy games of Dream-11 involving substantial skills is a business activity and not wagering having protection granted by Article 19(1)(g) of the Constitution. The SLP filed by said Varun Gumber against the above judgment was dismissed by the Hon'ble Supreme Court vide its order dated 15.09.2017. The Union of India has neither filed SLP against the

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said judgment dated 18.04.2017 of the Punjab & Haryana High Court nor filed any review of the order dated 15.09.2017 and have thus, accepted the findings contained therein. We are, therefore, of the view that the issue whether the fantasy games played on the platform of respondent No.5 are or are not gambling/betting activities was thus closed and decided in favour of respondent No.5.

12. It is not in dispute that out of every ₹100/- received by respondent No.5 from each of the participant in a fantasy game contest, approximately ₹80/- are set aside in an escrow account, which is payable on completion of fantasy game contest towards prize amongst the winning participants. Since this actionable claim of ₹80/- is distributed amongst the winners, while only the remaining amount is retained as Platform Fee, this actionable claim is enforceable in law and is not part of a wagering contract.

13. In a PIL filed against respondent No.5 before the Bombay High Court in **Gurdeep Singh Sachar (supra)**, both the issues, as raised in the instant PIL, were raised and by a detailed judgment dated 30.04.2019, the Bombay High Court was pleased to dismiss the said PIL holding that the online fantasy cricket of respondent No.5 was a game of mere skill, as distinguished from a game of chance. The Dream-11 fantasy game does not involve risking money or playing stakes on the result of a game or an event, hence, the same did not amount to gambling/betting. The Bombay High Court also held that respondent No.5 is correctly paying 18% GST by classifying its services under entry 998439 and is not liable to pay GST @ 28% as applicable to 'online

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gambling services' under entry 999692 and that Rule 31-A(3) of the CGST Rules, 2018 was not applicable as the said actionable claim as per Schedule III and Section 7(2) of the Act, are not considered as 'supply of goods' or 'supply of services' and, therefore, the authorities have rightly not taken steps against Dream-11.

14. The decision of the Bombay High Court was challenged in four different SLPs. Three SLPs were filed by the parties therein. One SLP was also filed by said Varun Gumber. The SLP filed by PIL petitioner as well as by Varun Gumber were dismissed. In SLP filed by the Union of India, the Hon'ble Supreme Court dismissed the SLP on 13.12.2019, but limited to the gambling/betting issue and permitted the Union of India to file review so far as GST aspect was concerned. The review petition is pending before the Bombay High Court. The SLP filed by the State of Maharashtra which was listed later on 06.03.2020 is pending, wherein the judgment of the Bombay High Court is stayed. In the meanwhile, said Shri Gurdeep Singh Sachar also filed an application seeking clarification of the order dated 13.12.2019. The said application was also dismissed by the Hon'ble Supreme Court after hearing the parties vide order dated 31.01.2020 holding as follows:-

> *"It is reiterated that in accordance with our Order dated 13.12.2019, the only scope of the review filed in the Bombay High Court is with respect to GST and not to revisit the issue as to whether gambling is or not involved".*

15. The present PIL re-agitates the above two issues and according to the learned Additional Solicitor General, it is not maintainable.

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16. Another PIL in the case of **Chandresh Sankhla (supra)** was filed before this Court raising the very same allegations of gambling/betting against respondent No.5, which was dismissed vide judgment dated 14.02.2020 after considering in detail the above judgments of the High Courts of Bombay and Punjab & Haryana as well as the order of the Hon'ble Supreme Court dismissing the challenge to them holding as under:-

> *"15. This Court finds that the issue of treating the game "Dream 11" as having any element of betting/gambling is no more res integra in view of the pronouncements by the Punjab & Haryana High Court and Bombay High Court and further SLPs have also been dismissed by orders of these High Courts.*
>
> *16. Consequently, this Court finds no merit in the present Public Interest Litigation petition and the same is accordingly dismissed".*

17. The judgment of this Court in the case of **Chandresh Sankhla (supra)** has been referred in the judgment dated 24.07.2020 passed by the Madurai Bench of the Madras High Court in **Criminal O.P. (MD) No.6568/2020- D. Siluvai Venance Vs. State,** wherein the Madras High Court has also distinguished the case of fantasy sports games of Dream-11 from online gaming in general in para 37 thereof.

18. The Law Commission Report No.276, in paragraph 3.13 has opined that fantasy games such as "fantasy football" falls within "gaming", as distinguished from "betting".

19. The Commissioner of CGST, Mumbai has now issued a show cause notice dated 25.07.2020 to respondent No.5 raising certain protective demand of service tax, which is not the subject matter of the present PIL and would be dealt with by the authorities in accordance with law. However, in paragraphs 9.3

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and 10 of the said show cause notice, the GST Department has categorically taken a stand by relying on the judgment of the Hon'ble Superme Court in **Dr. K.R. Lakshmanan(supra)** that the online fantasy game of respondent No.5 is a game of skill. This stand taken by the GST Department is despite referring in paragraph 13.6(i) & (ii) of the show cause notice to the order dated 06.03.2020 of the Hon'ble Supreme Court in pending SLP. The submissions fairly advanced by the learned Additional Solicitor General appearing on behalf of respondent-Union of India are also to the effect that the issue of gambling/betting has already been finally decided by the Hon'ble Supreme Court vide order dated 13.12.2019, whereby the only issue kept open is regarding GST, which is pending consideration in the review petition before the Bombay High Court. Therefore, it is clear that even as per the stand of the Union of India and their GST Department, the business of respondent No.5 is not gambling/betting, however the issue of payment of GST is pending consideration.

20. We have also considered the submission of the respondent No.5 that the online fantasy games of respondent No.5 are not operating in total regulatory vacuum and on affidavit it has been submitted that they are subject to self-regulation by the industry body known as "Federation of Indian Fantasy Sports" (FIFS) founded in 2017, of which respondent No.5 is a member. The FIFS is a Section 8 Company incorporated under the Companies Act, 2013 for the purpose of self-regulation and promotion of best practices in online fantasy sports services and contests offered in India, which has issued a Charter for Online

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Fantasy Sports Platforms, which *inter-alia* imposes the following conditions:-

> *"1.3.6 Pay-to-play contest formats on an OFSP will not be offered by a Member to users who are less than eighteen (18) years of age.*
>
> *…….*
>
> *1.3.12 In contests on an OFSP, the skill component of such contests is predominantly determined via a manual team selection by users. As such, users will not be offered the opportunity or option to auto-select or auto-fill any part or portion of their fantasy sports teams.*
>
> *1.3.13 All users will be restricted from drafting or editing their fantasy team after the passing of a predetermined and pre-declared deadline. All contests on an OFSP will lock prior to the commencement of the underlying real-world competition to which the contest relates, and users will not be permitted to make any changes to their fantasy team during the course of a match or afterwards, which affects the tabulation of points with respect to such match.*
>
> *1.3.14 A team selection by a user will have to conform to the skill-set based combinations prescribed by a Member's rules and terms and conditions.*
>
> *1.3.15 A contest on an OFSP will require a user to draft a fantasy team composed of at least the number of athletes that would comprise a starting line-up of one (1) team in the real-world sports match; provided always that the minimum number of players in a fantasy team shall be five (5).*
>
> *1.3.16 At any given time, a user will be restricted from selecting more than seventy five percent (75%) of his/her fantasy players that constitute his/her fantasy team or squad from a single real-world team/squad in a single contest. Any fractional amounts shall be rounded down to the nearest whole number.*
>
> *1.3.17 Each Member will ensure that only real-world players and athletes are permitted to be drafted for fantasy sports teams.*
>
> *1.3.18 A winning outcome will not be based on the score, point-spread, or any performances or*

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results or partial results of any single real-world team or any combination of real-world teams.

1.3.19 A winning outcome will not be based on the score, point spread or performance of a single athlete in any single real-world sports match,.

1.3.20 The winning outcome of a contest on an OFSP offered by a Member will not be based on Esports contests or virtual, randomised, simulated or historical sports matches.

……..

1.3.27 Members will not offer gambling services"

21. The rules and regulations contained in the said Charter are to ensure that the games run by its members are 'games of skill' and are not in the form of any gambling/betting. The FIFS has also framed Ombudsman Rules, which mandate the Ombudsman to be a retired Judge of the Hon'ble Supreme Court or of a State High Court, to ensure that any disputes or grievances of the members of public who participate in the online fantasy games are redressed promptly and in a fair and transparent manner. Presently, Hon'ble Mr. Justice A.K. Sikri (retired) is the Ombudsman. FIFS has a representative structure with some of the most credible and distinguished board members including former Director-General of Police, former Secretary, Sports Authority of India, and former Secretary, BCCI. Further, a bare perusal of the leadership team of FIFS shows that it has eminent persons from the industry as well as ex-members of regulatory bodies, who are tasked with ensuring compliance with the applicable laws and the aforesaid Charter. FIFS presently has over 35 of the largest fantasy sports companies as members, who cater to 99% of the fantasy sports users in India. The fantasy sports industry is regarded as the next sunshine industry of India which is growing

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exponentially and already contributing thousands of crores to the Government exchequer. They also contain safeguards to ensure that persons below 18 years of age are not allowed to participate and that the public is not being misled or cheated and that there is transparency in financial matters, prizes etc. The FIFS has also issued Self-Regulation Guidelines on Advertising Online Gaming by adopting IAMAI Guidelines to ensure that the advertisements are fair, transparent and not misleading. The guidelines prohibit advertisements by members suggesting any gambling/betting activities and there is a penalty clause as well for violation. Being FIFS Member, respondent No.5 can offer only such game which provides an opportunity to the participant which is akin to a real-life selector and includes critical elements such as:-

(a) fantasy game offered shall relate to a minimum of one complete real-life upcoming sports match;

(b) the user needs to select at least the same number of athletes in his virtual team as in real life match (e.g. 11 players in Cricket/Football and 7 players in Kabaddi) from the competing teams in real life match; and

(c) fantasy game must not allow any changes in the virtual team after the real-life match commences.

Any variation in the said approved formats, such as shorter versions than the complete real-life match or allowing lesser players than the real-life match to be selected in a Fantasy Sport will not emulate a real life selector, and are not even permitted by FIFS. We are of the view that since respondent No.5 being a

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Member of FIFS has also submitted its regulations and charter of FIFS, no public interest element survives for the online gaming formats offered by them. Our findings are for the format of online fantasy games offered by Dream-11 being compliant with the Charter of FIFS, and may not be applicable if the stipulations contained in the Charter of FIFS are not followed in letter and spirit.

22. We also agree with the submission of respondent No.5 that the fantasy sports formats like that of Dream-11 are globally recognized as a great tool for fan engagement, as they provide a platform to sports lovers to engage with their favorite sports along with their friends and family. This legitimate business activity having protection under Article 19(1)(g) of the Constitution contributes to Government Revenue not only vide GST and income tax payments, but also by contributing in increased viewership and higher sports fan engagement, thereby simultaneously promoting even the real world games.

23. Certain submissions made in the response to the present PIL and the FIFS Charter have not been considered in the earlier judgments on the issue. We, therefore, have dealt with the same in some detail and in view of the same, even if all earlier judgments of different High Courts are ignored, we are of the independent view, particularly based on the Charter of FIFS, of which Dream-11 is a Member, that a participant of online fantasy sports platforms offered by the Dream-11 App, who enrolls in an online fantasy sport game and puts monetary stakes therein, performs a role similar to that of a real life team

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manager/selector, which requires use of substantial knowledge, strategy, skill, and adroitness against other participants. A participant is actually playing an online sport and not gambling, betting or wagering on the outcome of any game or an event inasmuch as the result achieved by a player of online fantasy sports on completion of the corresponding real life match, is wholly independent of the final result or outcome of such real life match / game / event.

24. Accordingly, the first issue as to whether the online fantasy sports games offered on Dream-11 platform are gambling/betting is decided against the PIL petitioner. Since the result of fantasy game depends on skill of participant and not sheer chance, and winning or losing of virtual team created by the participant is also independent of outcome of the game or event in the real world, we hold that the format of online fantasy game offered by respondent No.5 is a game of mere skill and their business has protection under Article 19(1)(g) of the Constitution of India, as repeatedly held by various Courts and affirmed by the Hon'ble Supreme Court.

25. Insofar as the second issue as to whether Dream-11 is wrongly classifying its virtual online games under wrong entry for GST and is also violating Rule 31A (3) of CGST Rules, 2018 to evade GST is concerned, respondent No.5 has submitted that we may consider the findings contained in paragraphs 7 to 16 of the judgment of the Bombay High Court in the case of **Gurdeep Singh Sachar (Supra)** as the arguments advanced on their behalf. However, in light of the above findings on the issue of

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gambling/betting, we deem it appropriate to leave the said second issue for the GST authorities to consider in accordance with law.

26. We are of the considered view that PIL has been filed without any real public interest, without disclosing the relevant facts and without proper research. Various judgments in respect of respondent No.5 itself have not even been referred in this PIL. The PIL is misconceived.

27. Consequently, we find no merit in the instant PIL petition and the same is accordingly dismissed with costs.

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(MAHENDAR KUMAR GOYAL),J (INDRAJIT MAHANTY),CJ

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