The Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act, 2022.

ACT 09 OF 2023

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The Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act, 2022.

ACT 09 OF 2023

[21st April 2023]

An Act to prohibit Online gambling and to regulate Online games in the State of Tamil Nadu.

BE it enacted by the Legislative Assembly of the State of Tamil Nadu in the Seventy-third year of the Republic of India as follows:-

CHAPTER-I.

PRELIMINARY.

1. Short title and commencement. - (1) This Act may be called the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act, 2022.

(2) It shall come into force on such date as the State Government may, by notification, appoint.

2. Definitions. - In this Act, unless the context otherwise requires,—

(a) "Appellate Authority" means the Appellate Authority established by the Government under section 13;

(b) "appointed day" means the date appointed under sub-section (2) of section 1;

(c) "Authority" means the Tamil Nadu Online Gaming Authority established under section 3;

(d) "geo-blocking" means restricting users from accessing online content, online applications or online services, based on the user's geographical location;

(e) "Government" means the State Government;

(f) "local online games provider" means an online games provider,—

(i) whose central management and control of the service is in this State; or

(ii) whose service that is available for access by the customers, is hosted in this State;

(g) "Non-local online games provider" means any online games service provider who is not a local online games provider;

(h) "other stakes" means anything recognised as equivalent to money and includes virtual credits, virtual coins, virtual tokens, virtual objects or any similar thing that is purchased within, or as part of, or in relation to, an online game;

(i) “online gambling” means online wagering or betting and includes playing of any online game of chance for money or other stakes, in any manner.

Explanation.— For the purpose of this clause, wagering or betting shall be deemed to comprise the collection or soliciting of bets, the receipt or distribution of winnings or prizes, in money or otherwise, in respect of any wager or bet, or any act which is intended to aid or facilitate wagering or betting or such collection, soliciting, receipt, or distribution;

(j) “online gambling service” means a service, for online wagering or betting or for any online game of chance and the customer of the service gives or agrees to give money or put up any other stake for the purpose;

(k) “online game” means any game, whether or not there are other participants in the game, that is played on an electronic or a digital device and is managed and operated as a software through the internet or any other kind of electronic or other technology for facilitating communication;

(l) “online game of chance” includes any online game which,—

(i) involves both an element of chance and an element of skill and the element of chance dominates over the element of skill; or

(ii) involves an element of chance that can be eliminated only by superlative skill; or

(iii) is a game that is presented as involving an element of chance; or

(iv) involves cards, dice, wheel or such other device, which works on random outcome or event generator;

(m) “online games provider” means any person who provides a service for the conduct of any online game;

(n) “online gaming server” means any mainframe computer or set of computers, installed or maintained by the online games provider, that accepts, processes, stores and validates transactions arising out of online gaming, and which manages, monitors and controls the entire system of online gaming;

(o) “payment gateway” means, a service that authorises a user’s transfer of funds between banks or financial institutions to merchants without direct delivery of bank or credit card account information;

(p) “prescribed” means prescribed by rules made under this Act;

(q) “regulations” means regulations made by the Authority under section 5;

(r) “Schedule” means the Schedule appended to this Act;

(s) “State” means the State of Tamil Nadu;

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(t) words and expressions used herein and not defined in this Act but defined in the Information Technology Act, 2000 [Central Act 21 of 2000] shall have the meaning, respectively, as assigned to them in that Act.

CHAPTER II
THE TAMIL NADU ONLINE GAMING AUTHORITY.

3. Establishment of Tamil Nadu Online Gaming Authority. - (1) The Government may, by notification, establish with effect from such date as may be specified in the notification, an Authority to be called the Tamil Nadu Online Gaming Authority, to exercise the powers conferred on, and perform the functions assigned to it under this Act.

(2) The Authority shall consist of the following Members nominated by the Government, namely:-

(a) an officer, who has retired from a post not below the rank of Chief Secretary to the Government - the Chairperson;

(b) an officer, who has retired from a post not below the rank of Inspector General of Police – Member;

(c) an expert in the field of information technology – Member;

(d) an eminent psychologist - Member; (e) an expert in the fi eld of online gaming – Member.

(3) The Chairperson and Members of the Authority shall receive such salary and allowances as may be determined by the Government.

(4) The Government may, in consultation with the Authority, provide such officers and employees, as deemed necessary, to the Authority, for the efficient discharge of its powers and functions under this Act.

4. Functions of Authority. - (1) The Authority shall perform the following functions, namely:-

(a) regulate online games;

(b) issue certificate of registration to local online games providers;

(c) identify online games of chance and recommend to the Government, for inclusion in the Schedule;

(d) oversee the functioning of the online games providers in the State;

(e) collect and maintain information and data with regard to the activities of the online games providers;

(f) request the Government to take appropriate action as per the Information Technology Act, 2000, whenever deemed necessary, for the purposes of this Act;

(g) resolve grievances or complaints received against any online games provider;

(h) send periodical reports to the Government in such manner as may be prescribed;

(i) advise the Government on any matter regarding online gaming; and

(j) perform such other functions as may be prescribed.

(2) The Authority may constitute such number of committees from among its members, as it deems fit, for the efficient discharge of its duties and performance of its functions under this Act.

5. Power to make regulations. - (1) The Authority may, by notification, with the previous approval of the Government, make regulations consistent with the provisions of this Act or the rules made thereunder, to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for, —

(a) time limit, monetary limit, age restriction or such other restrictions in regard to playing of online games; and

(b) procedure to regulate its own functions.

6. Power to obtain information. - (1) The Authority, or any officer empowered by it, in order to perform the functions conferred on it by or under this Act, may take such steps as may be necessary to obtain any information from any online games provider or online game player.

(2) The Authority may give directions, requiring any online games provider or person in-charge of any online gaming website, establishment or premises, where any activity relating to online gaming is carried out to furnish such information as deemed necessary.

(3) The Authority shall, while discharging any of its functions under this Act, have the same powers as are vested in a Civil Court while trying a suit under the Code of Civil Procedure, 1908 [Central Act V of 1908], in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person;

(b) receiving oral evidence on oath or written evidence on affidavits;

(c) requiring the discovery and production of any document;

(d) requisitioning of any public record or copy thereof from any court or offi ce;

(e) issuing summons for examination of witnesses or documents; and

(f) any other matter, which may be prescribed.

CHAPTER III
GENERAL PROHIBITIONS.

7. Prohibition of online gambling and of online games of chance. –

(1) Online gambling is prohibited.

(2) Playing of online games of chance specified in the Schedule, with money or other stakes is prohibited. Prohibition of online gambling and of online games of chance.

(3) No online games provider shall provide online gambling service or allow playing of any online game of chance specified in the Schedule, with money or other stakes or playing of any other online game in contravention of the regulations, in any form.

8. Prohibition of advertisement. – No person shall make or cause to make any advertisement in any media including electronic means of communication, in this State, which directly or indirectly promotes or induces any person to indulge in online gambling or play any online game of chance specifi ed in the Schedule, with money or other stakes.

9. Prohibition of transfer of funds. – No bank, financial institution or payment gateway provider shall engage in any transaction or authorization of funds towards payment for any online gambling or any online game of chance specified in the Schedule.

CHAPTER IV.
REGULATIONS FOR LOCAL ONLINE GAMES PROVIDERS.

10. Registration of local online games providers. – (1) On and from the appointed day, no local online games provider shall provide any service for the conduct of any online game except in accordance with the certificate of registration duly obtained from the Authority.

(2) Every local online games provider providing any service for the conduct of any online game, immediately before the appointed day, may continue to provide such service, subject to the general prohibitions contained in Chapter III of this Act, for a period not exceeding ninety days from the appointed day:

Provided that such local online games provider applies for registration under this section within a period of thirty days from the appointed day.

(3) Every application for registration shall be made to the Authority in such form along with such fee as may be prescribed.

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(4) On receipt of an application under sub-section (3), the Authority may, after making such enquiry as it deems necessary, either issue or refuse to issue a certificate of registration: Provided that no application for issue of certificate of registration shall be refused, unless a reasonable opportunity of being heard is given to the applicant.

(5) Every certificate of registration shall be issued in such form as may be prescribed, subject to the following conditions, namely:—

(a) The online games provider shall not provide, any online gambling service or allow playing of any online game of chance specified in the Schedule, with money or other stakes;

(b) The online games provider shall neither allow nor cause to be allowed to play any online game in contravention of the regulations.

(6) The certificate of registration issued under sub-section (5) shall be valid for a period of three years.

11. Suspension and revocation of certificate of registration. – (1) If the Authority is satisfied, either on a reference made to it in this behalf or otherwise that—

(a) the certificate of registration issued under this Act, has been obtained by misrepresentation or fraud;

(b) the holder of the certificate of registration has failed to comply with the conditions, subject to which the certificate of registration has been issued; or

(c) the holder of certificate of registration has contravened any of the provisions of this Act, the rules or the regulations,

then, without prejudice to any other proceeding to which the holder of the certificate of registration may be liable, the Authority may, by an order after giving him an opportunity to show cause, revoke the certificate of registration by giving reasons therefor.

(2) Notwithstanding anything contained in sub-section (1), where the Authority is of the prima facie view that the certificate of registration granted to the online games provider must be suspended, the Authority may, do so for reasons to be recorded in writing, at any time before revoking the certificate.

12. Appeal. – (1) Any person aggrieved by an order of the Authority revoking or suspending the certificate of registration under section 11, may prefer an appeal, within fifteen days from the date on which the order is communicated to him, to the Appellate Authority:

Provided that the Appellate Authority, may entertain the appeal after expiry of the said fifteen days period, if it is satisfied that there was sufficient cause for not filing it within that period.

(2) The Appellate Authority, after giving a reasonable opportunity of being heard to the appellant, shall decide the appeal as expeditiously as possible, but in any case not later than one month from the date of receipt of the appeal.

13. Establishment of Appellate Authority. – (1) The Government may, by notifi cation, establish an Appellate Authority, which shall consist of a Chairperson and not more than two other members.

(2) A person shall not be qualified for appointment as the Chairperson of the Appellate Authority unless he is a retired Judge of a High Court, or is a person who is qualifi ed to be a Judge of a High Court.

(3) The qualifications for appointment of the members of the Appellate Authority shall be such as may be prescribed.

(4) The Chairperson and the members of the Appellate Authority shall receive such salary and allowances as may be determined by the Government.

(5) The Government may, in consultation with the Appellate Authority, provide such officers and employees, as deemed necessary, to the Appellate Authority, for the efficient discharge of its powers and functions under this Act.

(6) Subject to the provisions of this Act, the Appellate Authority may regulate its own procedure.

CHAPTER-V.

REGULATIONS FOR NON-LOCAL ONLINE GAMES PROVIDERS.

14. Restrictions. – (1) No Non-local online games provider shall,—

(a) provide any online gambling service;

(b) allow playing of any online game of chance specified in the Schedule, with money or other stakes; or

(c) allow playing of any other online game contrary to the regulations, Restrictions. in this State.

(2) No Non-local online games provider shall be deemed to have contravened sub-section (1), if he has exercised due diligence or has provided geo -blocking in this State for the purpose.

(3) For the purpose of sub-section (2), a Non-local online games provider shall be deemed to have exercised due diligence if it had,—

(a) informed prospective customers that the State prohibits online gambling and playing of certain online games to customers who are physically present in this State;

(b) required the customers to enter into contracts with an express condition that the customers shall not use the service, if they are physically present in this State;

(c) required the customers to provide personal details suffi cient to establish that they were not physically present in this State;

(d) obtained data that indicated that the customers were not physically present in this State when the relevant customer accounts were opened and throughout the period when the service was provided to the customers; and

(e) taken all other reasonably practicable measures to ensure that no person physically present in this State could have access to online gambling service or to online games of chance prohibited under section 7.,

15. Procedure to deal with noncompliance of restrictions. – (1) Any Non-local games provider who fails to comply with any of the restriction specified in section 14 shall be issued with a show cause notice by the Authority in such form and manner, as may be prescribed, to furnish a reply within such period as may be prescribed. If no reply is received or if the reply received is not satisfactory, the Authority may proceed in accordance with sub-sections (2) and (3).

(2) The Authority shall make a recommendation to the Government to request the Central Government, or as the case may be, the officer specially authorized by the Central Government in this behalf, to exercise the power under section 69-A of the Information Technology Act, 2000 [Central Act 21 of 2000] to block access to persons in this State to the service provided by the Non-local online games provider:

Provided that,—

(a) the Government may, for reasons to be recorded in writing, refuse to act on the recommendation of the Authority; or

(b) where the Government accepts the recommendation of the Authority, it shall ordinarily make a request to the Central Government within fifteen days from the date of receipt of the recommendation.

(3) A copy of the recommendation made by the Authority under sub-section (2), shall be provided to the Non-local online games provider concerned.

CHAPTER-VI.

OFFENCES AND PENALTIES.

16. Penalty for contravention of sections 7, 8, 10 and 14. – (1) Any person who indulges in online gambling or plays any online game of chance specified in the Schedule, with money or other stakes in contravention of section 7 or plays any other online game in contravention of the regulations shall be punished with imprisonment for a term which may extend to three months or with fi ne which may extend to fi ve thousand rupees or with both.

(2) Any person who makes or causes to make advertisement in any media, in contravention of section 8, shall be punished with imprisonment for a term which may extend to one year or with fi ne which may extend to five lakh rupees or with both.

(3) Any person who provides, online gambling service or any online game of chance specified in the Schedule with money or other stakes or any person who contravenes the provisions of sub-section (1), (2) or (5) of section 10 or section 14 shall be punished with imprisonment for a term which may extend to three years or with fine which may extend to ten lakh rupees or with both:

Provided that a Non-local online games provider shall be punished for contravention of section 14, only if the Central Government or an offi cer specially authorised by it in this behalf, exercises the power under section 69-A of the Information Technology Act, 2000. Central Act 21 of 2000 [Central Act 21 of 2000].

(4) (a) If any person convicted of an off ence under sub-section (2) is again convicted of an off ence under the same provision, he shall be punished with imprisonment for the second and for every subsequent off ence for a term which shall not be less than one year, but may extend to three years and shall also be liable to fi ne which shall not be less than five lakh rupees, but may extend to ten lakh rupees.

(b) If any person convicted of an off ence under sub-section (3) is again convicted of an offence under the same provision, he shall be punished with imprisonment for the second and for every subsequent off ence for a term which shall not be less than three years, but may extend to five years and shall also be liable to fi ne which shall not be less than ten lakh rupees, but may extend to twenty lakh rupees.

17. Cognizance of offences. – No Court shall take cognizance of any off ence punishable under this Act, rules or regulations made thereunder except upon complaint in writing made by a person authorized in this behalf by the Authority.

18. Power to compound offences. – (1) Any officer specially empowered by the Government, by notification in this behalf, may accept, from any person who has committed an offence under sub-section (1) of section 16, by way of composition of such offence, a sum of money not exceeding the maximum amount of fine specified for such offence but not less than fifty per cent of the said amount.

(2) On payment of such sum of money to such officer, the accused person, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of such offence.

(3) The compounding of an offence under sub-section (1) shall be allowed only once for any person.

19. Offences by companies. – (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in-charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company including key managerial personnel as defined in the Companies Act, 2013 [Central Act 18 of 2013], such director, manager, secretary or other officer including key managerial personnel, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purposes of this section, —

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director” in relation to a firm, means a partner in the firm.

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CHAPTER-VII.

MISCELLANEOUS.

20. Chairperson, members, officers and employees of Authority and Appellate Authority to be public servants. – The Chairperson, every member of the Authority and of the Appellate Authority, officer or any other employee of the Authority and of the Appellate Authority shall, when acting or purporting to act in pursuance of any of the provision of this Act be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code [Central Act XLV of 1860].

21. Protection of action taken in good faith. – No suit, prosecution or other legal proceeding shall lie against any public servant in respect of anything which is done in good faith or intended to be done in the discharge of his official functions or in exercise of his powers under this Act, the rules, or the regulations.

22. Act not in derogation of any other law. – The provisions of this Act shall be in addition to, and not in derogation, of the provisions of any other law, for the time being in force.

23. Presumption as to online game of chance and power to amend Schedule. – (1) For the purposes of this Act, any online game specified in the Schedule shall be presumed to be an online game of chance.

(2) The Government may, by notification, omit or add any online game in the Schedule, on the recommendation of the Authority and upon issue of such notification, the Schedule shall be deemed to be amended accordingly.

24. Power to make rules. – (1) The Government may make rules for carrying out all or any of the purposes of this Act.

(2) (a) All rules made under this Act shall be published in the Tamil Nadu Government Gazette and, unless they are expressed to come into force on a particular day, shall come into force on the day on which they are so published.

(b) All notifications issued under this Act shall, unless they are expressed to come into force on a particular day, shall come into force on the day on which they are so published.

(3) Every rule made or notification or order issued under this Act shall, as soon as possible, after it is made or issued, be placed on the table of the Legislative Assembly, and if, before the

expiry of the session in which it is so placed or the next session, the Legislative Assembly makes any modification in any such rule or notification or order, or the Legislative Assembly decides that the rule or notification or order should not be made or issued, the rule or notification or order shall, thereafter, have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification or order.

25. Power to remove difficulties. – If any difficulty arises in giving effect to any provision of this Act, the Government may, by an order published in the Tamil Nadu Government Gazette, make such provisions not inconsistent with the provisions of this Act as may be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of two years from the date of the commencement of this Act.

26. Repeal. – The Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Ordinance, 2022 [Tamil Nadu Ordinance 4 of 2022] is hereby repealed.

THE SCHEDULE.

[SEE SECTION 23]

ONLINE GAMES OF CHANCE

(1) Rummy

(2) Poker

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