

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2016

CORAM:

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

W.P. NO. 3825 of 2016  
and  
WMP Nos. 3193 and 3194 of 2016

M/s. Ucal Fuel Systems Ltd.,

represented by its Authorised  
Signatory Ram Ramamoorthy

... Petitioner

-Vs-

1. Tamil Nadu Generation and  
Distribution Corporation Ltd.,  
(TANGEDCO)

Represented by its Chairman  
and Managing Director  
144, Anna Salai,  
Chennai - 600 002.

2. The Executive Engineer/ O & M  
Tamil Nadu Generation and  
Distribution Corporation Ltd.,  
(TANGEDCO)  
Ambattur, Chennai

... Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the 2<sup>nd</sup> respondent in his letter Lr. No. EE/O&M/AMBT/F.TOE/D.98/2016 dated 29.01.2016 and quash the same as illegal, arbitrary, without the authority of law and against the provisions of the Electricity Act, 2003 and Electricity Supply Code and consequently direct the 2<sup>nd</sup> respondent to give refund/ adjust of Rs.6,40,000/- already collected from the petitioner towards compounding fees and pass further orders.

For petitioner : Mr. A.R.L. Sundaresan  
Senior Counsel  
M/s. R.S. Pandiyaraj

For respondents : Mr. P.H. Aravinth Pandian, AAG  
Assisted by  
P.R. Dhilip Kumar for R1 & R2

## O R D E R

Heard learned senior counsel for the petitioner and the learned Additional Advocate General appearing for the respondents. With the consent of both parties, the writ petition is disposed of at the stage of admission itself.

2. The challenge in the present writ petition is to the notice issued by the 2<sup>nd</sup> respondent dated 29.01.2016. In the notice it has been alleged that during inspection, it was found that the petitioner has committed an offence of theft of energy by way of unauthorised use of electricity for other purpose (under Section 135(1)(e) of the Electricity Act, 2003, i.e. Industrial service connection was utilized for M/s. UCAL FUEL SYSTEMS Ltd., R&D lab and office. It is further alleged that by committing the said offence, the petitioner has dishonestly abstracted, consumed and used energy with an intention to defraud the licensee and it is punishable under Section 135 of the Electricity Act, 2003. The notice further states that the approximate loss, caused by the petitioner due to the dishonest abstraction is assessed at Rs.52,16,931/-, in accordance with the regulation of the Tamil Nadu Electricity Supply Code and a working sheet had also been enclosed with the impugned notice. The petitioner has been called upon to pay the assessed amount, within 7 working days, from the date of receipt of the notice. Further, the notice states that if the petitioner is desirous of filing objection, if any, against the provisional assessment, the same may be sent to the 2<sup>nd</sup> respondent, within 7 days from the date of the notice and the petitioner may also choose to appear in person or through authorised representative with the relevant documents for enquiry, before the 2<sup>nd</sup> respondent.

3. At the first instance it has to be pointed out that the impugned order is being only a notice, the same cannot be set aside on the grounds raised by the petitioner. The legal issue would be as to whether the use of electricity for the R&D lab and office, would amount to unauthorised use of electricity and would fall within the mischief of Section 135(1)(e) of the Act. Learned counsel for the petitioner, after elaborately referring to the factual matrix placed reliance on the decision of the Hon'ble Supreme Court in the case of Southern Electricity Supply Company of Orissa Ltd. (SOUTHCO) and anr., vs. Sri Seetaram Rice Mill, (2012) 2 SCC 108 and the decision of this Court in N. Mohammed Farook vs. Union of India, Ministry of Power, New Delhi in W.P. (MD) No.1715 of 2011 dated 20.02.2012, which was rendered following the said decision.

4. The Hon'ble Supreme Court in the case of Sri Seetaram Rice Mill (supra) pointed out the ambit scope of Section 126 of the Act, with reference to the contradiction of the words "unauthorised use" , "means" and the power of the Assessment Officer. The Hon'ble Supreme Court also explained the distinction between the scope of "unauthorised use of electricity" , "service", "theft of electricity" and it was held that Section 135 deals with the offence of, and penalty for theft of electricity, which falls within the Criminal jurisprudence and mens rea is a constituent of the said offence; whereas Section 126 primarily falls under Civil Law and does not involve mens rea. This Court, in the case of N. Mohammed Farook vs. Union of India, Ministry of Power, New Delhi (supra) took note of the distinction pointed out by the Hon'ble Supreme Court and in the said case, a direction was issued to the Electricity Board, to consider the explanation of the petitioner therein and pass appropriate orders on merits and as per law, taking into account the distinction between Section 126 and 135, as indicated by the Hon'ble Supreme Court in the case of Sri Seetaram Rice Mill (supra).

5. Learned Additional Advocate General submitted that compounding has been done by the petitioner, by accepting that it is for the commercial use and this is evident from the provisional assessment working sheet appended to the impugned notice. Learned Additional Advocate General would further submit that the use of Industrial service connection for purposes, other than for which the use of electricity was authorised, would fall within the ambit of Section 135 and if the petitioner is desirous of submitting any objection, it should be submitted by the petitioner along with the relevant documents, as they may intend to produce.

6. After hearing the learned counsel for the parties and perusing the materials placed on record, as pointed out earlier, the impugned proceedings is only a notice. The question of quashing it at this juncture, does not arise. But, however, it should be made clear that the petitioner should have an opportunity to submit their objection, by placing material to show the distinction that they seek to draw between the power under Sections 126 and 135 of the Act. If this opportunity is denied to the petitioner, it would amount to violation of principles of natural justice. This Court is inclined to make such observation because the impugned notice is a quasi criminal proceedings, under Section 135 (1)(e) of the Act. Section 135 deals with theft of electricity and as pointed out by the Hon'ble Supreme Court, in such a case, mens rea is a constituent of the said offence; whereas Section 126 primarily falls under

Civil Law and does not involve mens rea. Therefore the petitioner should be afforded an opportunity to raise their objection, as regards the applicability of Section 135(1)(e) of the Act, among other things. Only if such opportunity is granted, it would satisfy the principles of natural justice.

7. In the light of the above, the Writ Petition is disposed of, by giving 10 days time, for the petitioner to submit their objection to the impugned proceedings and the petitioner is at liberty to raise all legal issues, including that Section 135 will not stand attracted. The petitioner shall produce necessary documents to support their stand and on receipt of the objection, the 2<sup>nd</sup> respondent shall afford an opportunity of personal hearing to the petitioner and thereafter pass a final order on merits and in accordance with law. In the Writ Petition, the petitioner has sought for a consequential relief to refund/ adjust Rs.6,40,000/- the amount collected towards compounding fees. Strictly speaking, this relief is not a consequential relief. Therefore, the question of any direction for adjustment or refund, does not arise and it is open to agitate such an issue through independent proceedings before the 2<sup>nd</sup> respondent, in terms of the aforesaid direction. Since the petitioner had already paid the compounding fee, the 2<sup>nd</sup> respondent is directed to restore the electricity supply forthwith. The 2<sup>nd</sup> respondent is also directed to pass final orders in terms of the above directions, after affording an opportunity of personal hearing, within a period of 15 days from the date of receipt of the objection. Since the issuance of the certified copy of the order would be delayed, this Court has requested learned Additional Advocate General to direct the 2<sup>nd</sup> respondent to restore the electricity supply, forthwith. Consequently, the Miscellaneous Petitions are closed. No costs.

Sd/-

सत्यमेव जयते  
Assistant Registrar(CS II)

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Sub Assistant Registrar

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To

1. The Chairman  
and Managing Director  
Tamil Nadu Generation and  
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144, Anna Salai,  
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2. The Executive Engineer/ O & M  
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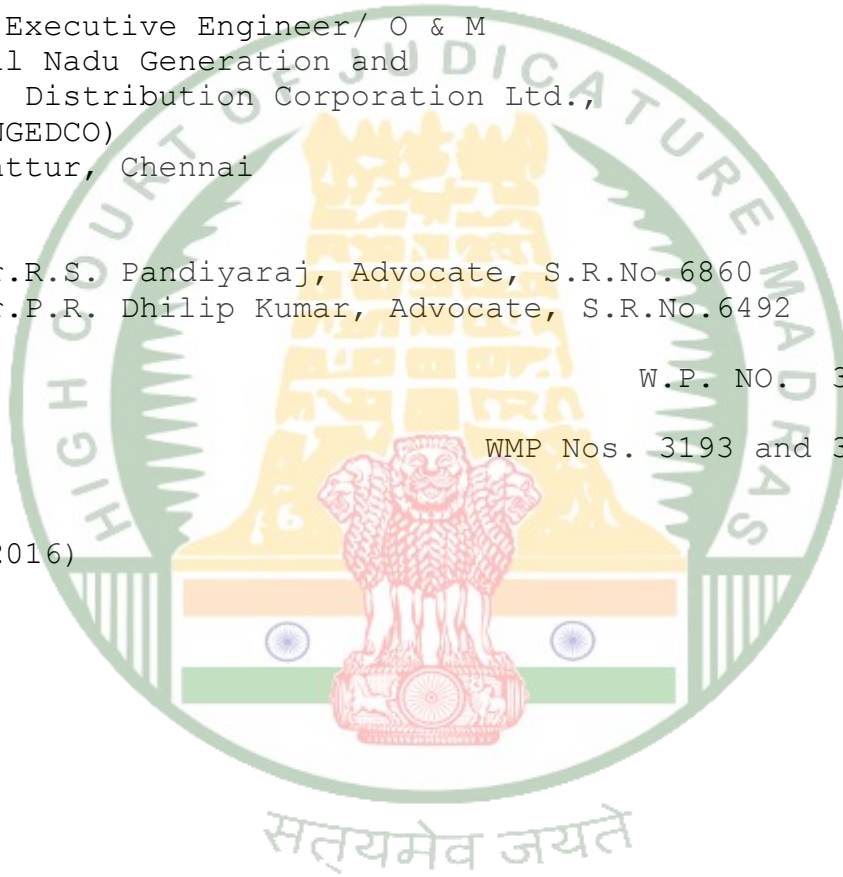
+1cc to Mr.R.S. Pandiyaraj, Advocate, S.R.No.6860

+1cc to Mr.P.R. Dhilip Kumar, Advocate, S.R.No.6492

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GJ(CO)  
CA(17/02/2016)



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