



# TAMIL NADU ELECTRICITY OMBUDSMAN

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## BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI

**Present : Thiru. A. Dharmaraj, Electricity Ombudsman**

### **Appeal Petition No. 43 of 2016**

Dr. Elangovan,  
No.1-A, Sambasivam Pillai Street,  
Ariyalur.

..... Appellant  
(Party-in-person)

Vs

The Assistant Engineer/O&M,  
Town/Ariyalur,  
Perambalur Electricity Distribution Circle,  
TANGEDCO,  
Main Road, Near Joseph Eye Hospital,  
Ariyalur – 621 704.

..... Respondent  
(Rep by Thiru. Rajendran, AE/Town/Ariyalur )

**Date of hearing: 15.9.2016 & 10.11.2016**

**Date of Order : 30.11.2016**

1. The Petition dt.12.5.2016 filed by Dr. Elangovan, Ariyalur has been registered as Appeal Petition No.43 of 2016.
2. The Appellant prayed for the following :
  - (i) to cancel the orders of the AE dt.16.2.2016 and order for disconnection of the service No.392 immediately, so that he could construct a Hospital for his own use as requested by him on 9.8.2013 and 20.8.13 addressed to the SE, TANGEDCO.

(ii) to order for disciplinary action against Thiru. K. Rajendran, AE, Ariyalur for having failed to discharge his official duties as per the direction of the High Court in the order dt.1.12.2015, dereliction of duties false creation and tampering of records.

(iii) to order for an enquiry by the vigilance wing of the EB, on the background and the persons behind for issuing such an invalid order by the AE, as the findings of the AE, Ariyalur is against natural justice, and one passed beyond his powers, as he is worrying about the welfare of Govindaraj rather than Venkatachalam. In O.S. No.214/12 it has already been declared that there is no balance of convenience in favour of Venkatachalam and Govindaraj. The Municipality, VAO, Revenue records and Food Safety Officer, previous AE other department officials are saying that both of them have no right, but the present AE, EB is holding them for personal gain. As on date no upto date documents have been produced by Venkatachalam in support of his possession. As per the orders of the High Court, he has no locus standi to continue there as he had no lease agreement either with him or with Govindaraj, no licence issued by the Municipality and the Food Safety Officer to run a Cool Drink Shop at the above place. Vigilance enquiry is absolutely necessary in this case.

(iv) Permission may be granted to him as provided under section 197 of the Cr.Pc, to prosecute the AE before the Magistrate for the failure on his part in discharging his official duties and doing favour to a person against the direction of the High Court and

(v) to take action against the Chairman, CGRF of Perambalur Circle for not following the procedures prescribed under various regulations and circulars issued by the TNERC for having passed on incorrect and incomplete order under section 142 of the Electricity Act 2003.

3. The Respondent has furnished his counter dt.6.6.2016 vide his letter dt.6.6.2016.

4. To enable the Appellant and the Respondents to putforth their arguments in person, a hearing was scheduled on 9.8.2016. It was postponed to 15.9.2016 as the Appellant has prayed for postponement of the hearing stating that he has underwent decompression and correction surgery on 27.7.2016 and has been advised to take rest for one more month. Another hearing was also conducted on 10.11.2016.

5. Dr. Elangovan the Appellant herein has attended the hearing on both the dates and putforth his side arguments.

6. Thiru. K. Rajendran, Assistant Engineer/Town/Ariyalur the respondent herein has attended the hearing on both the days and putforth his arguments.

7. The Appellant has argued as follows:-

(i) Thiru. Venkatachalam is not in possession of valid rental agreement from 2012 to till date, failed to produce the deed before the Courts and to the AE,Ariyalur in all the cases filed by him against disconnection.

(ii) The document dt 20-5-2008 said to be produced before the present AE Thiru.Rajendran is a fabricated, forged and not registered as per Law as mentioned above. It cannot be accepted as a valid document.

(iii) Even if it is taken as a deed, it has not been renewed on its expiry on 18-5-2013.The action of the AE and the Chairman, CGRF accepting it as a document in 2016 is highly irregular which shows their malafide intention to help out of way for personal gain.

(iv) The observation of the AE, EE and Chairman CGRF that CMA 11/2012 filed by Venkatachalam is still pending disposal at the Sub Court is illegal as the High Court in its order dt 1-12-2015 have already passed an order in the same issue and directed the AE to verify the records. However the officials of EB are expecting that the lower Court will pass an order over riding the judgement rendered by the High Court.

(v) The observation of the AE and CGRF that cases are pending about the ownership of the land are unwarranted and has no force at all as the High Court in its order dt 1-12-2015 have already observed that the Court is not inclined to go into all aspects relating to ownership, since the WP has been filed against the proposed disconnection. They are not competent to act against the findings of the High Court. EB has to decide the issue whether Venkatachalam is in lawful possession or not. EB officials have no business to examine the ownership details not entrusted to them by the High Court.

(vi) The High Court in their order in Appeal Suit No.708/2012 filed by the said Govindaraj has dismissed the suit on 30.6.2010 with costs and confirmed the order of the Principal District Judge dt.28.3.2012 putting up a full stop on the claim of Thiru. Govindaraj that he is having right over the property.

(vii) The AE, EE and the Chairman, CGRF are all quoting rule 21 of the Supply Code in their favour forgetting that there are many provisions as in section 5(6)(1)(2) of the Supply Code, para 198(1) and para 198(3) of the TNEB manual, enabling the consumer of the Service Connection to shift or dismantle temporarily at his will. In this case Venkatachalam has not entered into a lease

agreement with him after 2011 and he has not issued any consent letter in favour of him.

(viii) After changing the SC in his name on 2-9-2011, the EB officials ought to have insisted Thiru. Venkatachalam to produce the consent letter from him as specified in Sec 27(4) of the Distribution Code. Failure on this part has created many issues.

(ix) The contention of the AE that the service connection standing in his name cannot be disconnected as per instructions issued by the TANGEDCO in Memo No. CE/ Comml / EE3/ AEE2/F.SC /D.855/2015 dt 28-10-2015 is not relevant to the present issue. They cannot be applied in toto in this case. The Courts including the High Court had already declared that Thiru. Govindaraj has no entity to become a owner of the land in question and Venkatachalam is not in possession of a valid rental deed executed by him or Govindaraj as on date. The suits filed by him also dismissed on many occasions as narrated above. As per the directions of the High Court in WP.No.28433/2013 dt-12-2015 he has failed to produce a valid rental deed before the AE, but produced a fabricated/forged document which is not valid before Law. More over the AE has failed to verify the original rental deed at that time of enquiry. On 1-2-2016, Venkatachalam has deposed that he is handing over the document. Now the AE in his letter dt 20-5-2016 has requested Thiru. Venkatachalam to produce the original document within 3 days of the receipt of his letter. Till date the original has not yet been produced. It clearly shows that the document dt 20-5-2008 is a fabricated one, created for the purpose of enquiry.

(x) Thiru. Venkatachalam is not doing any business or utilizing the service connection of the property. Thiru. K. Arumugam, S/o Kasi Chettiar is running a shop Amman Cool Drinks in the above place and the licence granted to him to run a Cool Drinks Shop No.22414002000323 has been cancelled on 23.12.2014 itself as he has failed to produce the documents conferring right over the property to Thiru. Govindaraj and the rental agreement made between Govindaraj & Arumugam on 9.10.2015, the food safety officer has also declared that Venkatachalam has not been granted any licence to do Cool Drinks business in the above address.

8. On the hearing date the Appellant argued that a decision about whether, Thiru. Venkatachalam is a legal occupant or not shall be given.

9. The Respondent putforth the following arguments in the counter affidavit.

(i) வணிக மின் இணைப்பு V392, 31.1.2007 அன்று திரு. கோவிந்தராஜ் பெயரில் வழங்கப்பட்டு 2.9.2011 அன்று திரு. இளங்கோவன் அவர்கள் பெயருக்கு மின்இணைப்பு பெயர் மாற்றம் செய்யப்பட்டது.

(ii) திரு. கோவிந்தராஜ் அவர்களும் திரு. வெங்கடாசலம் அவர்கள் 20.5.2008 அன்று வாடகை ஒப்பந்தம் செய்துக்கொண்டு அவர்கள் அம்மன் கூட்டிரிங்ஸ் என்ற பெயரில் திரு. வெங்கடாசலம் அவர்கள் கடைவணிகம் செய்து வருகிறார்.

(iii) மேன்மைமிகு சென்னை உயர்நீதிமன்ற உத்தரவில் (வழக்கு எண்.W.P.No.28433/2013) V.392 மின்இணைப்பை துண்டிப்பு செய்யவேண்டும் என நேரடியான உத்தரவு எதுவும் இல்லை. மேலும், மின்இணைப்பு துண்டிப்பு செய்யக்கூடாது என திரு. வெங்கடாசலம் அவர்கள் அரியலூர் சார்பு உயர்நீதிமன்றத்தில் C.M.A. NO.11/2012 என்ற வழக்கின் மூலம் மேல்முறையீடு செய்து வழக்கு நிலுவையில் உள்ளது. இந்த வழக்கின் விசாரணை விரைவில் நடைபெறவுள்ளது.

(iv) CGRF part (2)3ல் (6)ன் படி மன்றத்தில் தலைவர் மற்றும் ஒரு உறுப்பினர் இருந்தாலும் வழக்கினை விசாரணை செய்யலாம் என தெரிவிக்கப்பட்டுள்ளது.

(v) மேலும், டாக்டர் P. இளங்கோவன் அவர்களுக்கு தலைவர் (CGRF அவர்களின் விசாரணைக்கு முன்னதாகவே அறிக்கையின் நகல் அளிக்கப்பட்டு விட்டது.

(vi) வாரிய குறிப்பாணை Memo No.CE/EE3/AEE2/F. Objections/D.855/2015 DT.28.10.15 வழிகாட்டுதல்படியும் மின்சார வழங்கல் தொகுப்பு விதி எண்.21ன் படி (தனி ஒருவர் மின்சாரக் கட்டணமாகவோ அல்லது அது தொடர்பான மின்சார கட்டணம் இல்லாத வேறு பிற தொகையாகவும் அமைந்த நிலுவைகளை செலுத்த புறக்கணித்தால் மட்டுமே மின்துண்டிப்பு செய்ய இயலும்) தற்போது மின்இணைப்பு எண்.V392க்கான மின்கட்டணம் தவறாமல் மின் பயனீட்டாளரால் செலுத்தப்பட்டு வருவதால் மின்இணைப்பு எண்.V 392ஐ துண்டிப்பு செய்திட இயலாது. எனினும், நீதிமன்றம் உத்தரவிட்டாலோ அல்லது தமிழக அரசு ஆணை வழங்கினாலோ மட்டுமே மின்இணைப்பை துண்டிப்பு செய்திட இயலும் என பணிவுடன் தெரிவித்துக் கொள்ளப்படுகிறது.

16. The Respondent has also furnished a copy of the affidavit filed by Thiru. Venkatachalam & Sathu alias Santappan and the counter by the Assistant Engineer / O&M/Ariyalur in C.M.A. No.11/2012 on the file of the Subordinate Judge, Ariyalur.

17. As the Respondent has stated that a case is pending in the Court of Subordinate Judge, Ariyalur in C.M.A. No.11/2012, the relevant paras of the affidavit filed by the Appellant viz Venkatachalam and other in C.M.A.No.11/2012 is extracted below :

“xxxx xxxxx xxxxxxxx

5) Now the 1<sup>st</sup> Respondent by an high handed act by claiming that he had obtained a sale deed from the persons who had no right to execute any such sale deed claim some false right of title over the property and also he is bent upon forcibly evicting the Plaintiffs from the suit property by unlawful means. A perusal of the very sale deed obtained by the Defendant will go to show that he has purchased only a vacant site. No construction or the existence of any shop buildings in our possession have been made mention of. This itself will prove the 1<sup>st</sup> defendant's nefarious activity of threatening the Plaintiffs to evict by forcible means employing the heavy machineries such as pockline etc. all on a sudden without any due notice to the Plaintiffs with the help and influence of local police on false representations. It is also understood that the 1<sup>st</sup> Defendant colluding with the 3<sup>rd</sup> defendant, is actively trying to disconnect the

existing service connection in the suit premises. So the 3<sup>rd</sup> defendant TNEB authority is also added as party.

6.       xxxxx xxxxxx xxxxx
7.       xxxx xxxx xxxxxxxxx
8.       xxxx xxx xxx xxxxx
9.       xxxx xxx xxx xxxxx

*It is therefore just and necessary that this Honourable court may be pleased to grant ad-injunction restraining the Respondents/Defendants, their men and agents, servants from interfering with peaceful possession and enjoyment of the Appellants/ Petitioners/Plaintiffs as tenants over the suit property till the disposal of the petition and temporary injunction to the same effect till the disposal of the appeal and suit in the trial court in the interest of justice.”*

18. On a careful reading of the above stated para 5 of the Affidavit, it is noted that the 3<sup>rd</sup> defendant (viz) Junior Engineer/O&M/Town/Ariyalur was also added as the 3<sup>rd</sup> defendant and is alleged to be actively trying to disconnect the service.

19. Further, as per the prayer, the Appellant have prayed for ad injunction restraining the Respondents/Defendants, their men and agents servants from interfering the peaceful possession and enjoyment of the Appellant as tenants over the suit property till the disposal of the petition and temporary injunction to the same effect till the disposal of the appeal and the suit.

20. The main prayer of the Appellant in appeal petition No.43 of 2016 filed before me is to cancel the order of the dt.16.2.2016 and to order disconnection of SC No.V392 immediately.

21. As Thiru. Venkatachalam in CMA 11 of 2012 on the file of the Subordinate Judge, Ariyalur has prayed for an injunction restraining the defendants namely, Dr. Elangovan, Govindaraj & Junior Engineer, Ariyalur interfering the peaceful possession

and enjoyment of the suit property as tenant, the disconnection of the service connection of the suit property which is also the subject matter of the present case filed before me.

22. As the same subject matter is pending in the Court of Subordinate Judge, Ariyalur, I would like to refer the regulation 17(4)(d) of the Regulations for CGRF and Electricity Ombudsman. The said regulation is extracted below :

*17(4) No complaint to the Electricity Ombudsman shall lie unless:*

*(a) The complainant had before making a complaint to the Electricity Ombudsman made a written representation to the forum of the licensee named in the complaint and either the forum had rejected the complaint or the complainant had not received any reply within a period of 50 days from date of filing of the grievance or the complainant is not satisfied with the reply given to him by the forum.*

*Provided that this shall not be applicable to the complaints of common nature described under sub-regulation (1).*

*(b) The complaint is made within three months after cause of action has arisen.*

*(c) The complaint, which is not settled, is not in respect of the same subject, which was settled through the office of the Electricity Ombudsman in any previous proceedings whether received from the same complainant or along with one or more complainants or anyone or more of the parties concerned with the subject matter;*

*(d) The complaint does not pertain to the same subject matter for which any proceedings before any court is pending or a decree or award or a final order has already been passed by any competent court; and*

*(e) The complaint is not frivolous or vexatious in nature.*

23. On a careful reading of the said regulation 17(4)(d), it is noted that Electricity Ombudsman cannot entertain a petition if any proceeding before any Court is pending or a Decree or Award or Final Order has already been passed by any competent Court on the same subject matter.

24. As Junior Engineer/O&M/Town/Ariyalur is also added as one of the parties in above said C.M.A.No.11/2012 wherein it was prayed to order ad injunction restraining the defendants from interfering the peaceful possession and enjoyment of the property as tenant, the disconnection of service is also covered in the said case pending. Further, Thiru. Venkatachalam has prayed for injunction as a tenant only. Hence, the legal occupation or not is also sub-judice. Therefore, I am of the view that the Electricity Ombudsman cannot entertain the above petition for passing an order as per regulation 17(4)(d) of the Regulations for CGRF and Electricity Ombudsman.

25. Regarding, the other prayers, of the Appellant such as taking Disciplinary action against the AE, ordering of vigilance enquiry against the AE, giving permission to prosecute the AE are all prayers requesting action against an employee of the licensee for his actions in the disputed issue, Hence, I am of the view that the Electricity Ombudsman does not have jurisdiction to entertain such issues.

26. In view of the above, the appeal petition No.43 of 2016 is treated as closed. No Costs.

**(A. Dharmaraj)**  
Electricity Ombudsman

To

1) Dr. Elangovan,  
No.1-A, Sambasivam Pillai Street,  
Ariyalur.  
Cell No.9443122138, 9843509191.

2) The Assistant Engineer/O&M,  
Town/Ariyalur,  
Perambalur Electricity Distribution Circle,  
TANGEDCO,  
Main Road, Near Joseph Eye Hospital,  
Ariyalur – 621 704.

3) The Chairman,  
(Superintending Engineer),  
Consumer Grievance Redressal Forum,  
Perambalur EDC,  
TANGEDCO (FORMERLY TNEB),  
230 KV Auto SS Complex,  
Near Four Road, Perambalur-621 220.

4) The Chairman & Managing Director,  
TANGEDCO,  
NPKRR Maaligai,  
144, Anna Salai,  
Chennai – 600 002.

5) The Secretary,  
Tamil Nadu Electricity Regulatory Commission,  
19-A, Rukmini Lakshmi pathy Salai,  
Egmore,  
Chennai – 600 008.

6) The Assistant Director(Computer) – **Hosting in the TNEO website please,**  
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