

Under Rule 130 of the Tamil Nadu Legislative Assembly Rules, the following Bill which was introduced in the Legislative Assembly of the State of Tamil Nadu on 5th December, 2014 is published together with Statement of Objects and Reasons for general information:-

L.A. BILL NO. 29 OF 2014

A Bill to provide for the establishment of Ombudsman for conducting enquiry on the allegations against the elected members of the local bodies and the officers and employees working under the local bodies in the State of Tamil Nadu and for matters connected therewith and incidental thereto.

BE it enacted by the Legislative Assembly of the State of Tamil Nadu in the Sixty-fifth Year of the Republic of India as follows:-

1. (1) This Act may be called the Tamil Nadu Local Bodies Ombudsman Act, 2014.

Short title and
commence-
ment.

(2) It shall be deemed to have come into force on the 13th day of November 2014.

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

Definitions.

(1) “action” means action taken by way of decision, recommendation, resolution or finding or in execution thereof or in exercise of administrative or legal functions in any other manner and includes wilful failure in taking action or omission to act and all other expressions relating to such action shall be construed accordingly;

(2) “allegation”,—

(a) in relation to a public servant, means any affirmation that such public servant,—

(i) has abused his position as such for any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person;

(ii) was actuated in the discharge of his functions as such public servant by personal interest or improper or corrupt motives;

(iii) is guilty of corruption, favouritism, nepotism or lack of integrity;

(iv) is guilty of any action as public servant which facilitates or causes to make any loss of the fund or other property of the local bodies; or

(v) has failed to act in accordance with the norms of integrity and conduct which ought to be followed by public servants of the class to which he belongs;

(b) in relation to a local body, means and includes any affirmation that such local body has defaulted or acted in excess of its powers in the discharge of its functions imposed on it by law or in implementing the orders and directions of the Government;

(3) “complaint” means a statement of allegation that a public servant or a local body is guilty of corruption or maladministration and includes any reference to an allegation in respect of which *suo-motu* enquiry has been proposed or recommendation for enquiry has been made by the Government;

(4) “corruption” includes anything punishable under Chapter IX of the Indian Penal Code or under the Prevention of Corruption Act, 1988;

Central Act
XLV of 1860.
Central Act 49
of 1988.

(5) “Government” means the State Government;

(6) “incapacity” means physical or mental illness of a person or otherwise becoming unable to discharge his functions;

(7) “local body” means,—

(i) the Municipal Corporation of Chennai, Madurai, Coimbatore, Tiruchirappalli, Tirunelveli, Salem, Tiruppur, Erode, Vellore, Thoothukudi, Thanjavur, Dindigul or any other municipal corporation that may be constituted under any law for the time being in force; or

(ii) a Municipal Council constituted under the Tamil Nadu District Municipalities Act, 1920; or

Tamil Nadu Act
V of 1920.

(iii) a District Panchayat constituted under the Tamil Nadu Panchayats Act, 1994;

Tamil Nadu Act
21 of 1994.

(8) “maladministration” means an action taken or purported to have been taken in the exercise of administrative function in any case, —

(i) where such action, administrative procedure or practice governing such action is unreasonable, unjust, oppressive, discriminatory or nepotistic and will make illegitimate gain or loss or will deny deserving benefits; or

(ii) where there is wilful negligence or delay in taking such action, or the administrative procedure or method regulating such action will cause undue delay and includes the action leading to loss or waste or misuse of fund by malfeasance or misfeasance;

(9) “misbehaviour” means, if the Ombudsman is, or becomes, in any way concerned or interested in any contract or agreement, made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof, or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company;

(10) “Ombudsman” means an authority for making enquiries in respect of charges on any action involving corruption or maladministration or irregularities

in the discharge of administrative functions in accordance with the provisions of the relevant law, by the local bodies and public servants working under the local bodies and for the disposal of such complaint;

(11) “public servant” means an elected member of the local body including its Chairperson or Vice-Chairperson, Mayor or Deputy Mayor and includes the officers and employees working under the local body;

(12) “relevant law” means,—

(i) in the case of Chennai City Municipal Corporation, the Chennai City Municipal Corporation Act, 1919;

Tamil Nadu Act
IV of 1919.

(ii) in the case of Madurai City Municipal Corporation, the Madurai City Municipal Corporation Act, 1971;

Tamil Nadu Act
15 of 1971.

(iii) in the case of Coimbatore City Municipal Corporation, the Coimbatore City Municipal Corporation Act, 1981;

Tamil Nadu Act
25 of 1981.

(iv) in the case of Tiruchirappalli City Municipal Corporation, the Tiruchirappalli City Municipal Corporation Act, 1994;

Tamil Nadu Act
27 of 1994.

(v) in the case of Tirunelveli City Municipal Corporation, the Tirunelveli City Municipal Corporation Act, 1994;

Tamil Nadu Act
28 of 1994.

(vi) in the case of Salem City Municipal Corporation, the Salem City Municipal Corporation Act, 1994;

Tamil Nadu Act
29 of 1994.

(vii) in the case of Tiruppur City Municipal Corporation, the Tiruppur City Municipal Corporation Act, 2008;

Tamil Nadu Act
7 of 2008.

(viii) in the case of Erode City Municipal Corporation, the Erode City Municipal Corporation Act, 2008;

Tamil Nadu Act
8 of 2008.

(ix) in the case of Vellore City Municipal Corporation, the Vellore City Municipal Corporation Act, 2008;

Tamil Nadu Act
26 of 2008.

(x) in the case of Thoothukudi City Municipal Corporation, the Thoothukudi City Municipal Corporation Act, 2008;

Tamil Nadu Act
27 of 2008.

(xi) in the case of Thanjavur City Municipal Corporation, the Thanjavur City Municipal Corporation Act, 2013;

Tamil Nadu Act
24 of 2013.

(xii) in the case of Dindigul City Municipal Corporation, the Dindigul City Municipal Corporation Act, 2013;

Tamil Nadu Act
25 of 2013.

(xiii) in the case of Municipalities and Town Panchayats, the Tamil Nadu District Municipalities Act, 1920; and

Tamil Nadu Act
V of 1920.

(xiv) in the case of District Panchayats, the Tamil Nadu Panchayats Act, 1994;

Tamil Nadu Act
21 of 1994.

(13) “Secretary” means the Secretary referred to in section 6;

(14) “State” means the State of Tamil Nadu.

Appointment of
Ombudsman.

3. (1) There shall be an authority for the local bodies at State level to be known as "Ombudsman".

(2) The Governor shall, on the advice of the Chief Minister, appoint a person who has been an officer of the Government not below the rank of Principal Secretary to Government of Tamil Nadu as Ombudsman.

(3) A person appointed to be an Ombudsman shall, before entering upon his/her office, make and subscribe before the Governor or some other person appointed by him in that behalf, an oath or affirmation according to the form set out in the Schedule.

Term of office
and conditions
of service of
Ombudsman.

4. (1) A person appointed as Ombudsman shall hold office for a term of three years from the date on which he/she enters upon his/her office:

Provided that,—

(a) the person appointed as Ombudsman may, at any time by writing under his/her hand addressed to the Governor, resign his/her office;

(b) the person appointed as Ombudsman may be removed from his/her office in the manner specified in section 5; and

(c) the person appointed as Ombudsman shall retire from office if, during the term of his/her office, he/she completes the age of seventy years.

(2) The Ombudsman shall be entitled for payment of salary and allowances as may be admissible to the Tamil Nadu State Election Commissioner.

Removal of
Ombudsman.

5. (1) The Ombudsman shall not be removed from his/her office, except by an order of the Governor, passed after a resolution of Legislative Assembly of the State, supported by a majority of the members of the Legislative Assembly present and voting, for such removal, on the ground of proved misbehaviour or incapacity.

(2) The procedure for the presentation of an address under sub-section (1) and for the investigation and proof of the misbehaviour or incapacity of the Ombudsman shall be in accordance with the provisions of the rules framed for the purpose by the Government.

(3) Notwithstanding anything contained in sub-section (1), the Ombudsman shall be removed from office by the Governor on the advice of the Chief Minister, if he/she,—

(a) is adjudicated as an insolvent; or

(b) engages during his/her term of office in any paid employment outside the duties of his/her office; or

(c) is convicted and sentenced to imprisonment for an offence which involves moral turpitude.

Officers and
employees of
Ombudsman.

6. (1) The Ombudsman shall have a Secretary, and such other officers and employees as the Government may determine in consultation with the Ombudsman to assist the Ombudsman in the exercise of his/her powers and discharge of his/her functions under this Act.

(2) The appointment and conditions of service of the Secretary, officers and other employees shall be such as may be prescribed.

(3) The officers and other employees referred to in sub-section (1) shall be under the superintendence and control of the Ombudsman.

(4) Without prejudice to the provisions of sub-section (1), the Ombudsman may, for the purpose of conducting enquiry under this Act, utilise the services of,—

- (a) any officer or investigating agency of the Government; or
- (b) any other State agency.

(5) The Ombudsman may requisition the services of any person who is having experience and expertise in any particular subject in deciding the questions before him.

7. The Ombudsman shall perform all or any of the following functions, namely:—

Functions of
Ombudsman.

(i) enquire into any written complaint from the Government or that has come to the notice of the Ombudsman in which corruption or maladministration of a public servant or a local body is alleged;

(ii) pass an order on the proved allegation in the following manner, namely:—

(a) where the irregularity involves a criminal offence committed by a public servant, the matter shall be referred to the appropriate investigating agency for necessary action;

(b) where the irregularity involves loss of the fund of the local body, order recovery of such loss from those who are responsible for such irregularity;

(c) where the irregularity is due to wilful negligence or dereliction of duty of any officer or employee of the local body, recommend for departmental action by the appropriate authority under the relevant rules.

8. (1) The Ombudsman shall, for the purpose of any enquiry, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 and, in particular, in respect of the following matters, namely:—

Powers of
Ombudsman.

(a) summoning and enforcing the attendance of complainant or witnesses and examining him/her on oath;

(b) requiring the discovery and production of any relevant and necessary document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record, or copy thereof from any court or office;

(e) issuing commission for the examination of witness and documents; and

(f) any other matter which may be prescribed.

(2) Where the Ombudsman finds after enquiry that the allegation contained in a complaint is without any substance, he/she may, by an order, direct the complainant to pay to the opposite party an amount specified in the order by way of cost.

(3) Where the allegation contained in a written complaint is about the loss of the fund of the local body, the Ombudsman may, during enquiry, collect evidence, determine the loss and direct in his/her order, the amount to be realised from the person responsible.

(4) If the amount payable as per the order passed by the Ombudsman under sub-section (2) or sub-section (3) is not paid within the period specified by him/her, the same shall be recovered as if it were an arrear of land revenue under the Tamil Nadu Revenue Recovery Act, 1864.

Tamil Nadu
Act II of 1864.

Service of
Government
Department.

9. The Government may, at the request of the Ombudsman, make available the services of officers and employees of the Government including police personnel to assist the Ombudsman in the conduct of enquiry.

Enquiry.

10. (1) Notwithstanding anything contained in this Act, the Government may refer any allegation of corruption or maladministration against a local body or a public servant which is within their knowledge or brought to their notice, to the Ombudsman and the Ombudsman shall enquire into it as if it was a complaint filed under this Act.

(2) The Ombudsman may, on receipt of a complaint, examine the complaint and supporting documentary proof and where there is *prima facie* case, he/she may enquire into it.

(3) The Ombudsman shall not enquire into matters relating to,—

(a) any matter in respect of which a formal and public enquiry has been ordered by the Government;

(b) any matter in respect of which an enquiry has been ordered under the Commission of Inquiries Act, 1952 or any matter pending before a Court;

Central Act LX
of 1952.

(c) any complaint filed after the expiry of five years from the date on which the occurrence is said to have taken place.

(4) After an enquiry, if the Ombudsman is satisfied that,—

(a) the complaint is frivolous or vexatious or is not made in good faith; or

(b) there is no sufficient ground to continue proceedings; or

(c) other remedies are available to the complainant and it would be more beneficial for the complainant to avail of such remedies in view of the circumstances of the case,

he/she may reject the complaint after recording his/her findings stating the reason therefor, and communicate the same to the complainant.

(5) The Ombudsman shall, subject to the provisions of this Act and the rules made thereunder, have power to regulate its procedure by fixing the time and place of sitting.

Initiation of
prosecution.

11. (1) If, after an enquiry, the Ombudsman finds that there is a *prima facie* case against a public servant involving a criminal offence, the Ombudsman may refer the complaint and the findings with recommendation to the appropriate investigating agency.

(2) The appropriate investigating agency, on completion of investigation, shall initiate prosecution after obtaining sanction from the competent authority.

Disposal of
complaints.

12. (1) The Ombudsman may consider and dispose of complaints other than those involving criminal offences, in the following manner, namely:—

(a) order the recovery of loss caused to the local body from the person responsible;

Tamil Nadu
Act II of 1864.

(b) order the recovery of loss from the accused failing which order for recovery of the amount as if it were an arrear of land revenue under the Tamil Nadu Revenue Recovery Act, 1864;

(c) refer the complaint to the appropriate authority to take disciplinary action for willful negligence or dereliction of duty of any officer or employee of the local body;

(d) order other necessary remedial measures considering the facts and circumstances of the case;

(e) where the Ombudsman finds that the procedure or practice regarding the administration of local body gives room for complaint, he/she may give suggestions to the Government or local body relating to the measures for avoiding the recurrence of such complaint.

(2) The Ombudsman shall submit an annual report regarding the performance of his/her functions under this Act to the Government and the Government shall lay it before the Legislative Assembly with an explanatory memorandum.

13. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule made thereunder.

Protection of
action taken in
good faith.

14. The Government may, from time to time, issue such directions, as it may deem fit, for giving effect to the provisions of this Act.

Power to give
direction.

15. If any difficulty arises in giving effect to the provisions 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 appear to them to be necessary or expedient for removing such difficulty:

Power to
remove
difficulties.

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

16. (1) The Government may make rules for carrying out the purposes of this Act.

Power to make
rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the conditions of service of the Ombudsman's Secretary, officers and employees;

(b) the form and manner of filing complaints before the Ombudsman;

(c) procedure to be followed during the inquiry, which, as far as possible, be summary proceedings;

(d) the manner of implementing the order of the Ombudsman;

(e) any other matter which the Government may deem necessary to prescribe.

(3) All rules made and notification issued 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.

(4) Every rule, notification or order made or 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 in the next session, the Legislative Assembly makes any modification in any such rule, notification or order or the Legislative Assembly decides that the rule, notification or order should not be made or issued, the rule, 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, notification or order.

Saving.

17. Nothing contained in this Act shall affect the provisions of the relevant laws in so far as it relates to public servant.

Repeal and
saving.

18. (1) The Tamil Nadu Local Bodies Ombudsman Ordinance, 2014 is hereby repealed.

Tamil Nadu
Ordinance
2 of 2014.

(2) Notwithstanding such repeal, anything done, any action taken or any direction given under the said Ordinance, shall be deemed to have been done, taken or given under this Act.

THE SCHEDULE.

[See Section 3].

I, having been appointed as the Ombudsman for local bodies, do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgement perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws.

STATEMENT OF OBJECTS AND REASONS

The Thirteenth Central Finance Commission has, among others, recommended that the State Government must put in place a system of independent local body Ombudsman to enquire into the complaints of corruption and maladministration against the functionaries of local bodies, elected members and officials and to recommend suitable action or pass appropriate orders. The Government have accepted the said recommendation and decided to undertake a legislation for setting up of a system of independent Ombudsman for the local bodies. Accordingly, the Tamil Nadu Local Bodies Ombudsman Ordinance, 2014 (Tamil Nadu Ordinance 2 of 2014) was promulgated by the Governor on the 12th November 2014 and the same was published in the *Tamil Nadu Government Gazette Extraordinary*, dated the 13th November 2014.

2. The Bill seeks to replace the said Ordinance.

S.P. VELUMANI,

*Minister for Municipal Administration,
Rural Development, Law, Courts and Prisons.*

MEMORANDUM REGARDING DELEGATED LEGISLATION.

Clauses 5 (2), 6 (2), 8 (1) (f), 14, 15 and 16 of the Bill authorise the Government to make rules or issue directions or orders, as the case may be, for the purposes specified therein.

2. The powers delegated are normal and not of an exceptional character.

S.P. VELUMANI,

*Minister for Municipal Administration,
Rural Development, Law, Courts and Prisons.*

FINANCIAL MEMORANDUM.

The Bill provides for establishment of the independent Ombudsman for the local bodies. The Bill when enacted would involve expenditure from the Consolidated Fund of the State. It is, however, not possible at this stage to estimate with any degree of accuracy, the expenditure to be incurred as a result of the proposed legislation.

S.P. VELUMANI,
*Minister for Municipal Administration,
Rural Development, Law, Courts and Prisons.*

A.M.P. JAMALUDEEN,
Secretary.