



W.P.No.42402 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2025

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THE HONOURABLE MR.JUSTICE **V. LAKSHMINARAYANAN**

W.P.No.42402 of 2025

and

W.M.P. Nos.47408 and 47414 of 2025

Amalorpavam Educational Welfare Society
rep. By its Secretary,
137, Yanam Vengatachalam Pillai Street,
Puducherry – 605 001.

.. Petitioner

VS

- 1.The Secretary to Government,
Local Administration Department,
Govt. of Puducherry,
Puducherry – 605 001.
- 2.The Secretary to Government,
Public Works Department,
Govt. of Puducherry,
Puducherry – 605 001.
- 3.The District Collector,
Puducherry.
- 4.The Director,
Local Administration Department,
Govt. of Puducherry,
Puducherry – 605 001.
- 5.The Commissioner,
Puducherry Municipality,
Puducherry.



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6.The Public Works Department
rep. By its Executive Engineer
(Water Supply),
Govt. of Puducherry,
Puducherry – 605 001.

7.The Superintending Engineer – I,
The Electricity Department,
Govt. of Puducherry, Puducherry.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus directing the respondents to consider its representations dated 11.11.2024 and 09.10.2025 and the fifth respondent to exercise its powers under Section 274(1) of the Puducherry Municipalities Act, 1973 and remove the illegal bore well, constructions, concrete foundation/structure and obstructions made by the respondents 6 and 7 in the middle of the entrance of the “extreme southern dead end portion” of the public street viz., the Kamaraj Street, Thamarai Nagar, Vanarapet, Puducherry, restore the said public street as the only access to its 2 plots and school to and from the said street and from it to the other streets/roads in the area and forbear the 7th respondent from installing any electricity transformer at the said place of the public street.



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: Mr.T.P.Manoharan,
Senior Counsel
for Mr.T.M.Naveen

For Respondents

: Mr.Vasanthakumar Venkatesane
Additional Government Pleader

ORDER

Heard Mr.T.P.Manoharan, learned Senior Counsel for Mr.T.M.Naveen representing the petitioner and Mr.Vasanthakumar Venkatesane, learned Additional Government Pleader for the respondents.

2. The petitioner is running a school under the name and style of "Amalorpavam Higher Secondary School". It is situated in Thamarai Nagar of Puducherry. The petitioner states that as many as 1800 students are studying in the school. About 164 teaching and non-teaching employees are regularly working in its campus. One of its boundaries is the Kamaraj Street. The cause of action for the present writ petition is installation of a borewell and pumpset, concrete construction and pipes, running above the ground on the road by the sixth and seventh respondents. The petitioner states that such installation is preventing proper usage of the street and



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that the installation is an encroachment within the meaning of The Puducherry Municipalities Act, 1973 (9 of 1973).

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3. The petitioner had called upon the fifth respondent to exercise his powers and remove the aforesaid encroachments. As the same was not done, the petitioner has come forward with the present writ petition. Mr.T.P.Manoharan submitted that to the encroachments, the Electricity Board of Puducherry had decided to install a transformer in the said area. Hence, he urged this Court to issue a writ as prayed for.

4. Taking note of the allegations in the affidavit, when the matter came up before me on 12.11.2025, I directed Mr.Vasanthakumar Venkatesane, who took notice on behalf of the respondents, to go on record by way of a counter. The matter was listed on 18.11.2025. On that day, Mr.Vasanthakumar Venkatesane pleaded on account of torrential rains in Puducherry, the concerned authorities had not given him any instructions. After granting a couple of adjournments, the matter was taken up for hearing today.

5. Mr.Vasanthakumar Venkatesane has filed separate counter affidavits on behalf of respondents 5 to 7.

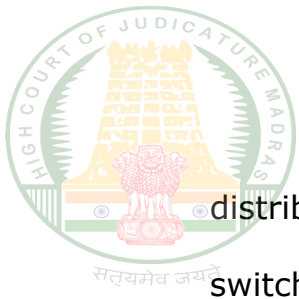


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6. Mr.T.P.Manoharan pointed out that in terms of Sections 253 and 254 of the Puducherry Municipalities Act, 1973, the fifth and sixth respondents are not entitled to install any borewell, submersible motor pumpsets, concrete constructions, pipelines and construct a motor room over a public street. The way out, according to Mr.Manoharan, is to declare that the street itself be permanently closed, by passing an order under Section 254 of the Puducherry Municipalities Act, 1973, and, thereafter, go about whatever manner of construction they please. He took me to the photographs enclosed in the typed set of papers, to point out that half of Kamaraj Street has been encroached upon by the Public Works Department by constructing a platform with the height of 3 feet, from which the pipeline runs into an adjoining building.

7. Mr.Vasanthakumar Venkatesane pointed out that, upon a request made by the Member of the Legislative Assembly of the area, seeking water supply for about 500 residents of the area, the Puducherry Municipality issued a 'No Objection Certificate' to the Water Works Sub Division of the Public Works Department to carry out the constructions. He also points out from the counter filed by the Electricity Board, that the Board has decided to install



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distribution transformers and allied high tension and low tension switch gears in the area. He relied upon Section 14 of The Electricity Act, 2003, to state that placing of electricity lines or electrical plants for transmission of electricity confers the power of a licensee on the Electricity Board in terms of Indian Telegraph Act, 1885. He pleads in terms of Section 10 of the Indian Telegraph Act, being a deemed telegraph authority in terms of the Indian Electricity Act, 2003, the Electricity Board is entitled to lay its distribution transformers at appropriate places of its choice.

8. On law, Mr.Vasanthakumar Venkatesane relies upon Article 243W read with Item 5 of the Twelfth Schedule of the Constitution of India to urge that the Union Territory of Puducherry has been empowered by the Constitution to create a municipality, and also pass a legislation to that effect, governing the administrative functions and powers of the municipality. He states that the fourth respondent is governed by the Puducherry Municipalities Act, 1973. He draws my attention to several provisions of the Puducherry Municipalities Act, 1973. He states that Section 2(36) defines as to what is a 'public street'. Thereafter, inviting my attention to Section 322, he states that no new well, tank, pond etc., in the area governed by the Puducherry Municipalities Act, 1973, can be dug or constructed without the permission of the Commissioner and it was



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in exercise of this power, that the Commissioner had permitted the

Public Works Department to dig a borewell in the public street.

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9. He states that in terms of Sections 67(1) and 67(2)(b) of the Puducherry Municipalities Act, 1973, the functions of municipal administration vests with the Council, and since it is their duty to decide on watering of public streets and places, a 'No Objection Certificate' was granted. He also draws my attention to Section 75 of the Puducherry Municipalities Act, 1973, stating that all public streets in the municipality vests in the Municipal Council, unless the power is specifically withdrawn by the Government. A gist of the arguments put forth by Mr.Vasanthakumar Venkatesane is that, as the Commissioner is empowered to grant permission to dig a borewell anywhere in the municipality limits, the grant of a 'No Objection Certificate', to dig such borewell on a public road is equally governed by the same provisions and it is absolutely unassailable.

10. I have carefully considered the submissions of both sides. I have also gone through the records.

11. The undisputed facts are the construction/installation of a borewell on Kamaraj street. The borewell was dug by the Public

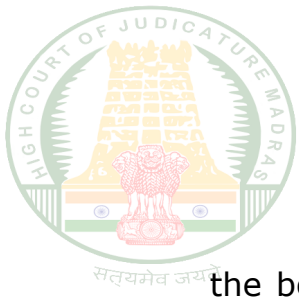


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Works Department pursuant to the No Objection Certificate issued by the fifth respondent. The issue I have to answer is whether the fifth respondent has such a power under the Puducherry Municipalities Act, 1973.

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12. Mr.Vasanthakumar Venkatesane is right that municipalities have been given a constitutional status by virtue of Part IXA of the Constitution of India. The nature of activities that they can undertake is also specified in the Twelfth Schedule. It is equally true that it is the duty of the municipality to ensure water supply for domestic, industrial, and commercial purposes, as found under Item 5 of the Twelfth Schedule. Much before the Constitution suffered the 74th Amendment in 1992, the legislature of Puducherry had enacted the Puducherry Municipalities Act, 1973. Section 2(36) defines what a 'public street' is. The crucial test for determining what a public street is to see whether any member of public has a right of way over it, irrespective of whether it is a thoroughfare or not. Section 2(36) is an inclusive definition and not an exhaustive one. This implies that a member of the public, if he has free access or a right of way over an area, it is deemed to be a 'public street' within the meaning of Section 2(36) of the Puducherry Municipalities Act, 1973.



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13. It is not in dispute in this case that Kamaraj Street, where

the borewell and constructions have been made, is a public street.

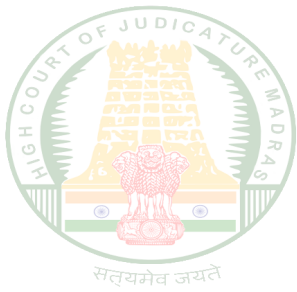
Yet again, I have to agree with Mr.Vasanthakumar Venkatesane that in terms of Section 67 of Puducherry Municipalities Act, 1973, certain duties have been imposed on the Municipal Council. While he refers to Section 67(1), perhaps, what has escaped his attention are Sections 62 and 67(2)(f). In terms of Section 67(2)(f), it is the duty of the Municipal Council to remove obstructions and projections coming under public streets or places and in spaces, not being private property, which are open to enjoyment of the public, whether such spaces are vested in the Council or in the Government. This implies that even if an area is not vested in municipality or in Government, if there exists obstructions or projections, which would affect the enjoyment of a member of the public, it is the duty of the Municipal Council to remove the same. This provision is not a standalone provision. It has to be read along with Section 75 of the Puducherry Municipalities Act, 1973. The legislature had declared that Section 75 will come into force with effect from 26th January 1974. On and from that date, all public streets with pavements, stones and other materials thereof and all works, materials and other things provided for such streets, all sewers, drains, drainage works, tunnels and culverts, whether made at the cost of Municipality or at the cost of anyone else, if they run



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alongside or under the street, whether a public or private street, vests with the Municipal Council. Even the Government, if it deems it necessary to take over this function from the Municipality, and hand it over to Public Works Department, it can do so only by way of a Notification. When Section 67(2)(f) is read with Section 75, one can come to the conclusion that public street vests with the municipality and it is the duty of the municipality to ensure that no encroachments, projections or obstructions are made over a public street.

14. It is here, Mr.Vasanthakumar Venkatesane places a more curious argument. Mr.Vasanthakumar Venkatesane pleads that the duty to remove the obstructions would apply only when those obstructions are made by private parties and not by public bodies. However, if such an argument is to be accepted, then a public street can be encroached upon by any wing of the State. In my view, the argument would not be correct in any other jurisdiction in law or even as per the provisions of the Puducherry Municipalities Act, 1973. If I were to fall prey to such an argument, then I should agree that a fence can certainly eat the crop that grows under its protection.



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15. Law prohibits encroachments, projections and obstructions on a public street. Puducherry legislature has not created any exception permitting encroachments by any of the State bodies. Unfortunately, I am of the view, the legislative members did not have the benefit of the capable submission that has been made by Mr.Vasanthakumar Venkatesane. Had they done so, they would have created provisions in the Municipalities Act, enabling the State Government or the State authorities to encroach on public spaces. My reading of the Municipalities Act and other municipal laws militates against such submission. When the property is vested with an authority to maintain it, the argument, that the authority, with whom it is vested, can encroach upon the same to the extent of obliterating the very object for which it has been vested, cannot be accepted.

16. Mr.Vasanthakumar Venkatesane states that the borewell was dug in terms of Section 304 read with Sections 291 to 301 of the Puducherry Municipalities Act, 1973. If I were to accept the argument made by Mr.Vasanthakumar Venkatesane, Sections 291 to 301, which applies for buildings applies to streets also, then it will



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lead to disastrous consequences. If accepted, the Commissioner would have the power to permit any branch of the State to put up constructions, even in the middle of a highways. Such exercise of the power will be contrary to Section 291. Hence, a classic case of *reductio ad absurdum*.

17. The power of the Commissioner should be interpreted in the spirit and letter of the law. Insofar as a citizen is concerned, no exception is permitted. In terms of the statute, an authority can only exercise the powers which are permitted, and those which are ancillary or incidental. The reason that Sections 67(2)(f), 75 and 304 have been engrafted in the legislation, is because when read harmoniously, it would lead one to the conclusion that the Municipal Commissioner has the power to permit digging of borewells in any area, as long as it does not result in obstruction to the usage of the road by the public. If I have to accept the argument of Mr.Vasanthakumar Venkatesane, it will lead to a conflict between Sections 67(2)(f), 75, 304 and 272 also. It is the duty of the Court not to read a statute whereby one provision of the Act conflicts with the other.

18. I will look at this issue in another angle. Roads and public streets have been vested in the municipality for the purpose of

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ensuring that they are maintained as it is. It is public trust imposed on the municipality to ensure they are maintained in a proper manner. If the Municipality were to permit encroachments on a public road, it will only give impetus to a person or a citizen to follow first and encroach upon the road. If questioned, the encroacher would point fingers on the Municipality stating that when the Municipality itself is encroaching on a public road, he is entitled to do so.

19. The doctrine of public trust which contemplates that public properties, which are vested in the public, are handed over to the Municipality for proper management, cannot be defeated by such convoluted arguments, especially such encroachments are sought to be justified that they were made for the benefit of 500 and odd inhabitants for supply of water.

20. Supply of water is not only the duty of the Municipality but also a fulfillment of the fundamental right of a citizen. In fact, this Court in **T.M.Prakash vs The District Collector, Tiruvannamalai District [(2013) 6 CTC 849 (Mad)]** had held that even an artificially developed energy like electricity, when supplied to a citizen is in fulfillment of a citizen's fundamental right. In the concluding paragraph of the said judgment, The Hon'ble Mr.



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Justice S.Manikumar (as he then was), held that supply of water is a part of Article 21 of the Constitution of India.

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21. Acting in discharge of this duty does not mean that the Municipal Council, can throw to the winds its duty to maintain a street as it is. The 'No Objection Certificate' granted by the Commissioner in favour of the Public Works Department to install the borewell cannot be upheld when it is placed alongside with the Puducherry Municipalities Act, 1973. It can only be construed as a failure of duty on the part of municipality to have granted permission to the Public Works Department to encroach upon a public road.

22. As rightly contended by Mr.T.P.Manoharan, the option for the municipality was to approach the Government, get a declaration that 'street is closed' and thereafter do what they pleases. As long as Kamaraj Street remains a street open to the public, the municipality does not have power to permit any encroachments. Such permission in my view is violation of the functions imposed on the municipality by the Constitution of India as well as by the Puducherry Municipalities Act, 1973. It is pertinent to point out that in terms of Twelfth Schedule, while Mr.Vasanthakumar Venkatesane places reliance on Item 5, Item 4 of the said provision seems to



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have gone unnoticed by him. As per Item 4, it is also the duty of the legislature to vest the power of maintenance of roads and bridges with the municipality. This concludes my discussion on the role of the municipality to put up construction on a public street.

23. Turning to the aspect of installation of transformers, on this aspect, I find force in the submission of Mr.Vasanthakumar Venkatesane. In terms of Section 164 of the Electricity Act, 2003, the appropriate Government, in this case Puducherry Government, by an order in writing is entitled to pass an order permitting a licensee to place electric lines, electric plants for transmission of electricity etc. This section also enables the Government to extend the powers, exercised by a Telegraph Authority under the Indian Telegraph Act, 1885, to a licensee under the Electricity Act. As to what is an "electric plant" has been defined under Section 2(22) of the Electricity Act, 2003. Any plant, equipment, apparatus or appliance etc., which are used in connection with generation, transmission, distribution or supply of electricity is covered by the said provision. Section 2(22) only excludes the electricity line, meter or electrical equipment or apparatus under the control of a consumer. Under Section 10 of the Indian Telegraph Act, 1885, it is the duty of the telegraph authority to maintain a telegraph line under, over, along or across any immovable property. Only in case

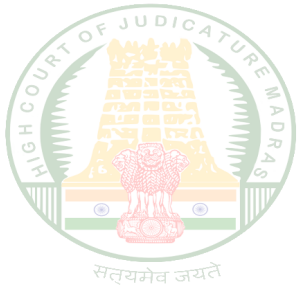


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of dispute, covered under Section 16 of the Indian Telegraph Act, should the licensee approach the District Collector for permission to install lines. Hence, the plea of the petitioner challenging the installation of transformers by the Electricity Board cannot be entertained.

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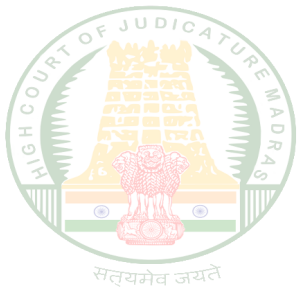
24. In this case, the road vests with the municipality. The purpose for which the transformer is being laid is for transmission of electricity. As provision is enacted under Section 2(22) read with Section 164 of the Electricity Act and Section 10 of the Indian Telegraph Act, I cannot find fault with the Electricity Board installing a transformer over the area. The property is not a private property as discussed above but a public one. Yet, the power to install the transformer does not entitle the Electricity Board to install the transformer in the centre of the road. The location should be so chosen that its presence does not interfere with the right of the public to have an access over the area. Electricity being a dangerous energy and the transformer, being installed close to school, I am sure, sufficient care would be taken by the Electricity Department of Puducherry to ensure that no possibility of accident occurs while choosing the site at Kamaraj Street.



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25. Mr.Vasanthakumar Venkatesane points out that the petitioner has an alternative access to the school from other public street and therefore, the petitioner is not entitled to open a gate on Kamaraj street. It is too well settled position of law right from the time John Tidd Pratt and William Warrander Mackenzie wrote a book on Highways that an owner of property, adjoining a public road, is entitled to have an access from each point of his/her property to the public street. When, it is open to the owner to have access from any point that his property touching a public road, he is not left to the whims and fancies of the Commissioner to decide as to where he should have an access. When these aspects were pointed out to Mr.Vasanthakumar Venkatesane, he drew my attention to page No.41 of the typed set of papers filed by the Commissioner. The said letter is scanned and extracted for ready reference hereunder:



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OFFICE OF THE ASSISTANT ENGINEER
WATER WORKS SUB DIVISION
PHD., PWD., PUDUCHERRY.

No: 9985 /PW/PHD/AE (WW)/JE(S) /2025-26

Puducherry, the 20.11.2025

To
The Commissioner,
Pondicherry Municipality,
Puducherry.

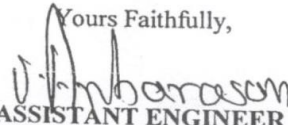
Sir,

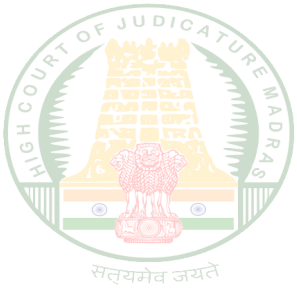
Sub: PW – PHD -WW – Petition by Amalorpavam Educational Welfare Society -
regarding rearrangement of borewell - Permission requested to alter the
existing pipe route below the ground level to avoid hindrance to the traffic and
to execute the work, allow a timeline of 4 weeks - Reg.

Ref: PM Lr. no. 153/PM/AE – IV/JE – II/2025 dt: 21.02.2025

In connection with the subject mentioned above, tube well was erected at Kamaraj
Street, Vanarapet, Uppalam to supply water to the nearby residents. Since, the matter has gone
to the court and under sub-judice, I humbly request that 4 weeks' time may kindly be granted
to take the tube well pipeline below the ground level to avoid any hindrance for the movement
of traffic. To carry out the work, time of 4 weeks may kindly be granted.

Thank you, Sir

Yours Faithfully,

V. Anandharasan
ASSISTANT ENGINEER
WATER WORKS SUB DIVISION
PHD., PWD., PUDUCHERRY.



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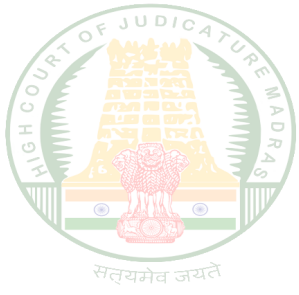
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26. As Public Works Department has requested four weeks time, to take the tube well pipeline below the ground level, to avoid any hindrance to traffic, the said time is granted. No extension would be permissible either by the Commissioner or by any other authority. Request that the pipelines will be taken underground is recorded. All constructions, projections and obstructions that are over the ground will have to be removed.

27. In the light of the above discussion, this Court passes the following order:

27.1 The pump room constructions made over Kamaraj Street by the Public Works Department shall be removed within a period of four weeks from today;

27.2 This order shall not prevent the Electricity Board to install a transformer, in accordance with law, as long as it ensures the safety of the children studying in school.



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28. The writ petition is partly allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

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Index:Yes/No
Neutral Citation:Yes/No
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To

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Local Administration Department,
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Puducherry – 605 001.
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- 3.The District Collector,
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- 5.The Commissioner,
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Puducherry.

20/22

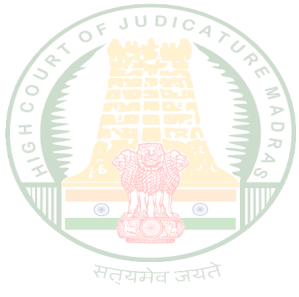


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6.The Executive Engineer
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V. LAKSHMINARAYANAN,J.

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