



WP (MD) Nos.12276 and  
24098 of 2017

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**RESERVED ON: 30.06.2023  
PRONOUNCED ON: 30.01.2024**

**CORAM:**

**THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

**WP(MD)Nos.12276 and 24098 of 2017  
and  
WMP(MD)No.9435 of 2017**

**WP(MD)No.12276 of 2017**

Suresh

... Petitioner

Vs

- 1.The District Collector,  
Madurai District,  
Madurai.
- 2.The Commissioner of Corporation,  
Madurai Corporatio,  
Corporation Office,  
Madurai.
- 3.The Divisional Engineer,  
Highways (Construction and Maintance),  
Madurai.
- 4.The Assistant Engineer,  
Tamil Nadu Electricity Board,  
Madurai Unit, K.K.Nagar,  
Madurai.



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5.The Assistant Commissioner of Police  
Anna Nagar (Law and Order),  
Madurai.

6.The Commissioner of Police,  
Madurai City.

[R5 and R6 are *suo motu* impleaded vide  
court dated 21.06.2023]

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a writ of mandamus forbearing the respondents, their officials, subordinates and servants to disturb or interfere with the petitioner's business at Mattuthavani Omni bus stand tiffin centre 1 /200, Melur road Wd44, Madurai and Consequently direct the respondent No.3 to renew the petitioner's licence by considering the petitioner's representation dated 11.02.2017.

For petitioner : Mr.SMA.Jinnah

For Respondent : Mr.M.Sarangan,

Nos.1,3 and 4 Additional Government Pleader

For Respondent : Mr.R.Murali

No.2

For Respondent :Mr.P.Kottaichamy

Nos.5 and 6 Government Advocate (Crl Side)



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Khaide Millath Mattuthavani Bus Stand  
Street Vendors Welfare Association,  
Represented by its President,  
M.Khader Maideen,  
Madurai, Madurai District

... Petitioner

Vs

- 1.The State of Tamil Nadu,  
Representation by its Secretary to Government,  
Municipal Administration and Water Supply Department,  
St.George Fort, Chennai.
- 2.The District Collector,  
Office of the District Collectorate,  
Madurai, Madurai District.
- 3.The Commissioner,  
Madurai Corporation,  
Aringar Anna Maligai,  
Madurai, Madurai District.
- 4.The Commissioner of Police,  
Madurai City.
- 5.The Assistant Commissioner of Police,  
Anna Nagar, Madurai.
- 6.The Superintendent of Engineer,  
State Higways and National Highways,  
Chennai.

[R4, R5 and R6 are *suo motu* impleaded vide  
court dated 21.06.2023]

... Respondents



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**PRAYER:** Writ Petition is filed under Article 226 of the Constitution of India for issuance of a writ of mandamus directing the 1<sup>st</sup> respondent to constitute the Town Vending Committee in terms of Section 22 of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 and consequently to forbear the 3<sup>rd</sup> respondent from illegally dispossessing the Street Vendors having shops situated outside the Mattuthavani bus stand, Madurai without following the due process of law by considering the petitioner's representation dated 11.12.2017 within the period that may be stipulated by this Court.

For petitioner : Mr.C.Venkatesh Kumar  
For Respondent : Mr.M.Sarangan,  
Nos.1, 2 & 6 Additional Government Pleader  
For Respondent : Mr.R.Vinayak  
No.3  
For Respondent : Mr.P.Kottaichamy  
Nos.4 and 5 Government Advocate (Crl Side)

### **ORDER**

The writ petition in WP(MD)No.12276 of 2017 is filed by one Suresh seeking for a writ of mandamus directing the respondents not to interfere with his business (tiffin centre) at Mattuthavani Omni Bus Stand and to renew the licence of the petitioner by considering his representation dated 11.02.2017. The other writ petition in WP(MD)No.24098 of 2017 is filed by the president of Khaidae Millath Mattuthavani Bus Stand Street Vendors Welfare Association for a writ of mandamus directing the respondents to form a committee as per Section 22 of the Street Vendors (Protection of Livelihood and Regulation of Street Vending)



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Act, 2014 and to forbear the respondents from dispossessing them from the shops run by them.

2.Since the subject matter in both writ petitions are same, both these writ petitions are heard together and disposed by this common order.

3.The learned Counsel for the petitioner in WP(MD)No.12276 of 2017 submits that the petitioner is running a tiffin shop in front of Mattuthavani Omni Bus Stand Madurai based on the licence granted by the 3<sup>rd</sup> respondent / the Divisional Engineer, Highways (Construction and Maintenance), Madurai on 21.10.2013. The petitioner is a street vendor. The petitioner is also paying yearly tax of Rs.300/- to the respondent Corporation. However without constituting the vending committee and without conducting any survey the 3<sup>rd</sup> respondent is taking steps to evict the petitioner. Therefore, the learned Counsel prays for appropriate directions to the respondents.

4.The 2<sup>nd</sup> respondent/ the Commissioner of Corporation, Madurai has filed a counter affidavit in WP(MD)No.12276 of 2017 on 04.06.2018 stating that the



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petitioner has not obtained any no objection certificate from the Corporation and as per the resolution No.791 dated 12.11.2014 the Corporation has every power to evict the encroachers. Further the petitioner has to approach the street vendors committee for redressal of this grievance.

5.The learned Counsel for the petitioner in WP(MD)No.24098 of 2017 submits that petitioner is the President of Khaidae Millath Mattuthavani Bus Stand Street Vendors Welfare Association and there are 30 members in their association and they are running eateries out side the Mattuthavani Bus Stand during night hours from the year 1999. Out of 30 members, 12 members have been issued with temporary licence by the Assistant Commissioner of Police (Law and Order), Anna Nagar by his proceedings dated 21.10.2013. He further submits that without forming town vending committee the respondent Corporation is trying to evict the petitioners. Therefore the learned Counsel prays for appropriate directions to the respondents.

6.Mattuthavani bus stand is the main central bus stand for Madurai corporation and it is the second biggest bus stand in Tamil Nadu. Several



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thousands of commuters are using this bus stand and several thousands are crossing this bus stand everyday. The area around the Mattuthavani bus stand is the most traffic congested area in Madurai city. In such a traffic congested area, the shops are permitted on the pavements in and around the bus stand. Due to the same, the commuters are forced to walk in the road, which results in traffic congestion and several accidents. It is to be noticed that there is no over bridge or subway to cross the road to enter into bus stand. During peak hours, senior citizens, women and children are finding it very difficult to cross the road. Without having any concern for the difficulties faced by the commuters, the officials have permitted several shops in front of Mattutahvani Bus Stand. The road in front of the Mattuthavani bus stand belongs to the State Highways Department and as per Section 26 of the Tamil Nadu State Highways Act, the State Highways Authority is empowered to permit a person to put up a temporary owning or tent, pandal or other similar erection or a temporary stall or scaffolding on any highway subject to safety and convenience of Traffic. In this case curiously the Assistant Commissioner of Police, Anna Nagar Police (Law and Order ), Madurai city has permitted some people to have shops in front of Mattuthavani bus stand. It has been reported that around 30 persons were permitted by the Assistant



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Commissioner and they have also formed an Association in the name of Khaidae Millath Matthuthavani Bus Stand Street Vendors Welfare Association. This association has now filed writ petition in WP(MD)No.24098 of 2017 in the year 2017 and by keeping this writ petition pending for the past five years without any interim order from this court, they continued to run their shops.

7. Not satisfied with this counter, this Court by order dated 21.06.2023 has suo motu impleaded the Assistant Commissioner of Police, Anna Nagar Madurai City and the Commissioner of Police, Madurai City as a party to these writ petitions and directed them to file their response to the following queries raised by this Court.

*“i. Under what authority, the Assistant Commissioner of Police, Anna Nagar (Law and Order) has allotted shops to few individuals in a heavy traffic zone like Mattuthavani Bus Stand.*

*ii. The steps taken by the Corporation to remove these shops, knowing that the shops are permitted by an incompetent authority in Non-vending Zone.*

*iii. The steps taken by the Highways authorities to remove these un-authorised shops on the Highways.*

*iv. Details with regard to the approximate number of commuters passing through the Mattuthavani Bus Stand every day.”*



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8. In response to the above the Commissioner of Madurai Corporation has filed a status report in WP(MD)No.12276 of 2017 dated 28.06.2023 stating that the Periyar Bus Stand was demolished for the purpose of reconstruction and all the shops were vacated during the month of December 2018. Based on the orders of this Court in WP(MD)Nos.20571, 22040, 22693 and 24268 of 2018, dated 17.12.2018, as an interim arrangement, 24 petty shops were allotted adjacent to the Omni Bus Stand compound wall for the shop owners, who were having shops in the Periyar Bus Stand Complex. As on today only 15 persons are running shops, out of 24 shops. Apart from this, there are 10 other shops identified by the Assistant Commissioner on 28.06.2023 all these shop owners were directed to produce their licence and the location of these shops is on Madurai – Melur main road and it is under the control of the State Highways Department.

9. The Commissioner of Madurai Corporation has filed a status report dated 20.06.2023 in WP(MD)No.24098 of 2017 stating that the vending committee for Madurai corporation has already been constituted on 11.01.2014 based on the proceedings of the Commissioner of Madurai Corporation in proceedings No.H6/8966(5) /13 and the Committee has identified 5448 street vendors in



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Madurai City and bio-metric identify cards were issued to them. The Mattuthavani area has been declared as a non-vending zone by the committee and the committee has already directed that no street vendors could carry out any trade or business with the radius of 30 metres from the Mattuthavani Bus Stand. Taking advantage of the permission granted by the Assistant Commissioner of Police, Anna Nagar, on 21.10.2013 the members of the petitioner's association are selling eatables during night hours. Since the place is declared as no vending zone, Corporation did not issue any licence to any one around Matthuthavani bus stand.

10.He also contends that the road from Mattuthavani to Othakadai vests with the Highways Department. Therefore, according to him the Highways Department is the competent authority to take action as against the writ petitioners and they are not entitled for any protection under the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act. It is further stated that as per the orders of this Court dated 24.08.2022 passed in WP(MD)No.19450 of 2022, the Corporation has identified alternate site and it was also communicated to the petitioner Association vide letter dated 22.12.2022.



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11.The Superintending Engineer, Highways Department/ 6<sup>th</sup> respondent in WP(MD)No.24098 of 2017 has filed a status report dated 30.06.2023 stating that the alleged road comes under the control of State Highways Madurai (C and M), North Division. They identified the encroachers around Mattuthavani Bus Stand, eviction notices were issued to them on 23.07.2019 and they were removed. After that few more encroachers in the name of vendors putting up temporary structures and causing nuisance to the general public and they are the reason for the heavy traffic at Mattuthavani. TAN- tea and Avin Milk alone were given permissions to have their outlet at Mattuthavani and apart from that the Highways department did not grant any permission to others in and around Mattuthavani Bus Stand. It is further stated that the expansion of road work is being carried out for the project under CRIDP-2022-2023 and a general eviction notice has already been issued to the encroachers.

12.This Court considered the rival submissions made on either side and perused the materials placed on record.



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13.The petitioner Association in WP(MD)No.20498 of 2017 claims that its members are street vendors and they have been issued with licence by the Assistant Commissioner of Police (L and O), Anna Nagar by his proceedings dated 21.10.2013. Though the petitioner in WP(MD)No.12276 of 2017 claims that he is a street vendor and licence has been issued by the Divisional Engineer, Highways Department, for him also the licence has been given only by the Assistant Commissioner of Police (L and O), Anna Nagar on 21.10.2013. By the said proceedings, the Assistant Commissioner of Police, without mentioning the licence period has granted licence to these petitioners to run temporary shops in front of Mattuthavani Bus Stand without any authority. When this Court raised a query as to under what authority the Assistant Commissioner of Police, Anna Nagar has issued the above licences, there is no direct reply to this query by the respondents. The Commissioner of Police though admit that the Assistant Commissioner is not having any power, is not inclined to proceed with the then Assistant Commissioner, who issued fake permissions to more than 30 vendors to have shops in front of the Mattuthavani Bus stand

14.Street vendors are the lowest class of the Society, who are eking their



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livelihood by vending in the streets. Most of these people are not having sufficient skills, education and support. The Hon'ble Supreme Court, in ***Sodan Singh & Others v. New Delhi Municipal Committee & Others* [1989 AIR 1988]**, has recognised them at the cost of the general public for using the road, only by considering their plight. On the directions of the Hon'ble Supreme Court in ***Gainda Ram & Others v. Municipal Corporation of Delhi & Others* [2010 (10) SCC 415]**, an Act and scheme for the street vendors have been framed.

15.The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act has been enacted in the year 2014. The urban street vendors and their vending activities are regulated under this Act. To implement the provisions of this Act, the respective State Governments were directed to frame their own scheme under Section 38 of the Act. Accordingly, Tamil Nadu Street Vendors (Protection of Livelihood and Regulation of Street Vending) Scheme and Rules, 2015, was notified by the State of Tamil Nadu on 02.11.2015 vide G.O.Ms.No. 159, Municipal Administration and Water Supply Department.



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16. Street vending means a person engaged in vending of articles, goods, food items or merchandises of everyday use or offering services to the general public in street, side walk, pavement or in other public places from the temporary put up structures or moving from one place to another place and including hawking, peddling, etc.,. This right is also provided to have shops in the vending zones.

17. Streets and Public Roads are meant for general public to travel. We have to take a balance between the requirements of the general public for using the road and these poor street hawkers / Vendors. If we allot the entire pavement to the street vendors, then we are compelling the pedestrians to walk in the roads. Therefore, the scheme as required under the Act has been framed in such a manner with a condition to constitute a Committee of representatives from Police (Law and Order & Traffic), Medical Health Officer, a representative from the Chamber of Commerce, People Welfare Society, Sanitary Officers, NGOs and representatives from Street Vendors. This Committee is expected to identify the Vending Zone and the Non-Vending Zone.



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18.The guidelines issued by the Government of Tamil Nadu, under the Tamil Nadu Street Vendors (Protection of Livelihood and Regulation of Street Vending) Scheme and Rules, 2015, for the identification of vending zones is extracted as under:-

*“20. Identification of vending zones: (1) The Town Vending Committee shall within a period of six months from the date of the publication of this Scheme identify the ‘vending zones’ and the ‘No vending zones’ for street vending and shall publish the details in the notice board of the local authority concerned.*

*(2) (a) The ‘vending zones’ and ‘No vending zones’ shall be identified based on the width of the street, volume of traffic and the number of pedestrians passing through the street and such other factors as may be material to identify the said zones in such a way that no or minimum inconvenience is caused to the general public using the street as well as the residents of the street and traders carrying on their business from the private properties abutting such street.*

*(b) The identification of the vending zones shall be done in consultation with the Traffic Police or Police having jurisdiction over the area concerned. The police may recommend a place to be a vending zone, the local authority concerned may accept, modify or reject the recommendations with due reasoning and designate a place or location as vending zone, as it deems fit.*

*(c) Any person aggrieved by the designation of the vending zones*



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*in an area shall be entitled to make a representation to the Town Vending Committee concerned the Committee shall consider the same and dispose within a period of fifteen days from the date on which the representation is received or in the next meeting of the Town Vending Committee, whichever is earlier.*

*(3) The identification of vending zones and no-vending zones shall be periodically reviewed by the Town Vending Committee once in five years in the same manner specified in sub-clause (2), particularly with reference to the growth or otherwise of the traffic and other developments in the area.”*

19.As per Rule 21(1) of the Rules and Scheme, the holding capacity of the street vendors of any particular area or locality shall be limited to 2.5% of the population of the particular ward or vending zone, as the case may be.

20. The petitioners have filed these writ petitions claiming to be street vendors, for a direction to the respondents to form vending committee as per the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014, however the respondent Corporation states that the street vending committee has already been constituted in the year 2014 itself vide proceedings No.H6/8966(5)/13 dated 14.01.2014 and the Committee has conducted survey and



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identified street vendors. The petitioners were not enumerated as street vendors.

The Committee has also declared 30 metres radius from the Mattuthavani Bus Stand as no vending zone. According to the Corporation the petitioners' shops are located on the road margin, under the control of the State Highways. The Highways Department did not grant any licence to the petitioners to have the shops in the highways road

21.The claim of the respondents is that the disputed shops are located in the road margin and the State Highways Department is the Competent authority. The Tamil Nadu Highways Act 2001 has been enacted with an object to prevent and removal of encroachments, constructions, maintenance and development of highways.

22.As per Section 26(2) of the Tamil Nadu Highways Act 2001, The State Highways Department is empowered to grant licence to put up a temporary structure with the concurrence of the District Collector concerned. The procedure for granting such a permission is also enumerated in Rule 6 of the Tamil Nadu Highways Rules, which is extracted hereunder:



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*“6.Permission to occupy the highway land: Permission is granted by the Highways Authority under Sub-Section (2) of Section 26 shall be in Form A.*

*PREVENTION OF UNAUTHORISED OCCUPATION OF, AND ENCROACHMENT ON, A HIGHWAY AND REMOVAL OF ENCROACHMENT.*

*26.(1) No person shall occupy or encroach on any highway within the highway boundaries. (2)*

*Notwithstanding anything contained in sub-section (1), the Highways authority may, with the concurrence of the Collector and with due regard to the safety and convenience of traffic and subject to such conditions, and on payment of such rent or other charges as may be prescribed, grant permission, of a temporary nature, to any person -*

*(a) to make any temporary use of any highway in front of any building owned or occupied by him or make a temporary structure overhanging the highway; or*

*(b) to put up a temporary owning or tent, pandal or other similar erection or a temporary stall or scaffolding on any highway; or*

*(c) to deposit or cause to be deposited building materials,*



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*goods for sale or other articles on any highway for a specified period; or*

*(d) to make a temporary excavation on any highway for carrying out any repairs or improvements to building on lands adjoining such highway.”*

23.As per Section 28 (2) of the Act the Highways Authorities without any notice can remove the encroachers and the same is extracted under :

*28.(1) The Highways authority or any person authorised by it in this behalf shall, at such time as may be considered necessary, conduct such checks and periodical inspection, of the highway boundaries, with the view to ensure the prevention of unauthorised encroachment and the removal of such encroachment. (2) The Highways authority or any person authorised by it in this behalf, may-- (i) remove, without any notice, any movable temporary structure, enclosure, stall, booth, any article whatsoever hawked, exposed or displayed for sale or any other thing whatsoever by way of encroaching the highway or in any area where the construction or development of a highway is undertaken or proposed to be undertaken; (ii) remove any immovable structure, whether permanent or temporary in nature, encroaching the highway or in the area vested with Government under this Act, after issuing a show cause notice against such removal, returnable*



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*within a period of seven days from the date of receipt thereof:*

*Provided that any representation received within the time limit shall be considered by the authority or officer concerned before passing final orders.”*

24.The writ petitioners are running shops outside the Mattuthavani bus stand and omni bus stand. The place, where the shops located is the State Highways road margin. The highways authority has denied grant of any permission to the petitioners. The corporation has also taken a stand that 30 meters around Mattuthavani bus stand is a non-vending zone and therefore they have not granted any license to any street vendors under the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act. However the petitioners have been running the shops based on the permission given by the Assistant Commissioner of Police, Anna Nagar. He is not the competent authority to grant such permission. The officer, who was aware of his powers, without any authority had granted permission and in the strength of the same the petitioners are having their shops for more than 10 years. The permission was granted in the year 2013 temporarily without specifying the period. Taking advantage of the same, the petitioners continue to have the shops without any hindrance. Neither the



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highways officials nor the corporation officials have verified whether the petitioners are having the shops with permission or not and allowed them to continue their shops for the past 10 years. Though the highways authorities are parties to this writ petition even after the notice, the department has not acted upon to remove the shops as per section 28(2) of the Tamil Nadu Highways Act. The highways authorities are empowered to remove any movables, temporary structures, booth, any articles whatsoever exposed or displayed for sale by way of an encroachment. The encroachments can be removed without even a notice. The highways authorities have not taken action as against the encroachers for the reasons best known to them. The corporation claims that the Mattuthavani bus stand and around 30 meters from Mattuthavani bus stand has been declared as non-vending zone under the Street Vendors Act. Having declared that the area is a non-vending zone the corporation officials have also not taken any steps to remove the encroachments for the reasons best known to them. Ultimately the common people, who are visiting Mattuthavani bus stand are the worst sufferers on account of these shops. It is not known how many accidents have taken place in view of these shops. The authorities, who are expected to Act according to the law are silent spectators for the past 10 years. The corporation also claims that



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these petitioners were not enumerated as the street vendors under the Tamil Nadu Street Vendors (Protection of Livelihood and Regulation of Street Vending) Schemes and Rules, 2015 and therefore they are not entitled for any relief under the Act.

25. In the light of the above discussion, both these writ petitions are dismissed with the following directions.

- i. The petitioners are at liberty to approach the street vending committee constituted under the street vendors Act within a period of four weeks from the receipt of copy of this order.
- ii. The street vending committee shall consider the case of these petitioners for allotment of any shop in any vending zone, provided if the petitioners satisfy the requirements under the Act to be declared as a street vendors.
- iii. The Commissioner of Police, shall initiate departmental proceedings as against the Assistant commissioner, who had permitted more than 30 persons in the year 2013 to have the shops outside the Mattutahvani Bus Stand.
- iv. The corporation has to place the board on either side on Mattutathavani



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bus stand that it is a non- vending zone and also ensure the pavements are made available for the commuters coming to Mattuthavani bus stand.

v.The Executive Engineer of the State Highways Department has to get a report from their subordinates periodically once in every six months about the establishment of any shops, booth, any movables of temporary structure on the road margins belonging to the State Highways and take necessary action under section 28(2) of the Tamil Nadu Highways Act.

vi.In the event any such permission is granted under section 26 of the Tamil Nadu Highways Act, then it has to be reviewed every year, depending upon the traffic of the locality by getting necessary no objection certificates from the concerned police.

vi.While granting the license the authorities have to specify the reasons for granting the license in the certificate and this certificate has to be displayed by the shopkeeper in a visible manner to everyone. No costs. Consequently connected miscellaneous petition is closed.

30.01.2024

Index : Yes / No  
Internet : Yes / No  
NCC : Yes / No

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To

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**B.PUGALENDHI, J.**

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