

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.2108 OF 2020

Kailash s/o Narayanrao Tithe

.. Petitioner

Versus

The State of Maharashtra and ors.

.. Respondents

Mr D.R. Shelke, Advocate for petitioner
Ms R.P. Gaur, A.G.P. for respondent no.1

**CORAM : S.V. GANGAPURWALA AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 3.2.2020

ORAL ORDER :

1. Heard Mr Shelke, learned Advocate for petitioner.
2. Learned Advocate submits that the advertisement has been issued by respondent no.3 to fill in the post on contractual basis. Posts are substantive posts. They are to be filled in by appointing candidates on permanent basis and not on contractual basis. The same will be violative of Government Resolution dated 17.12.2016. Learned Advocate submits that if those posts are not filled in by regularly appointed candidates, then only option for respondent no.3 was to issue tender. The petitioner is a Government Contractor. Right of the petitioner to participate in the tender process is violated. The right conferred upon the petitioner under Article 19 (1) (g) of the Constitution is breached. Learned Advocate placed reliance on the judgment of Apex Court in case of **Alagaapuram R. Mohanraj and ors. Vs. Tamil Nadu Legislative Assembly and anr.,** reported in **(2016) 6 SCC 82.**

3. The learned Advocate for petitioner submits that in other universities where the posts are not substantively filled in, the tenders are issued. Even respondent no.3 had earlier issued tender and the petitioner was given contract for eleven months.

4. We have heard learned A.G.P. for respondent no.1.

5. Article 14 of the Constitution does not envisage negative equality. No vested right has accrued in favour of the petitioner to get the work of respondent no.3 as a Government Contractor. It is for respondent no.3 to fill in the vacant substantive posts.

6. In case, instead of filling the posts on permanent basis, respondent no.3 is filling the posts on contractual basis, then the candidates, who are entitled for employment of respondent no.3 may agitate in respect of the same in accordance with law. However, petitioner is not eligible to apply for the said posts. The petitioner claims to be Government Contractor only.

7. In light of that the petitioner cannot claim his right being infringed.

8. The judgment in a case of **Alagaapuram Vs. Tamil Nadu Legislative Assembly** (supra) would not inure to the benefit of the petitioner. In the said case, the issue involved was with regard to the rights of the parties to contest election. The Apex Court was considering violation of the fundamental right so also the principles of natural justice. The resolution that was subject matter of challenge was concerning the disqualification, suspension of members of

legislative assembly and restoration of their emoluments upon setting aside the resolution.

9. As observed above, the petitioner does not have vested right to get the business from respondent no.3. It is for respondent no.3 to fill in the posts vacant with it by employment of persons and not necessary that it should issue tenders allotting the work to the government Contractor.

10. In light of the above, no relief can be granted to the petitioner. Writ Petition as such, is dismissed. No costs.

(SHRIKANT D. KULKARNI, J.)

(S.V. GANGAPURWALA, J.)

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