

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION No.3819 OF 2015

Ku. Aditi d/o Kishor Gajbe

-Vrs.-

The Scheduled Tribe Caste Certificate Scrutiny Committee, Nagpur & 2 others.

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's Orders.

Court's or Judge's orders.

Mr. R.S. Parsodkar, counsel for petitioner.
 Ms. P.D. Rane, AGP for respondent no.1.

CORAM : B.P. DHARMADHIKARI AND
P.N. DESHMUKH, JJ.

DATED : 17th March, 2016

Caste claim of petitioner as belonging to 'Mana' Scheduled Tribe has been invalidated on 4.6.2015. This Court on 8.7.2015 while issuing notice protected her education.

2. Advocate Parsodkar relies upon a validity given to one Jitendra Gajbe by Scrutiny Committee to urge that that validity is itself sufficient to resolve the dispute. He further points out that twelve more validities have been given to relatives. His grievance is, family tree and relationship is not in dispute and two school *Dakhal Kharij* entries of ancestors which mention date of birth as 4.2.1911 and 1.7.1908 clearly record caste as 'Mana' and in this situation, the invalidation cannot be sustained. He is relying upon the judgment of Division Bench of this Court reported in **2014(1) Mh.L.J. 437** (Mayur Shamrao Nannaware Vs. Scheduled Tribe Caste

Certificate Scrutiny Committee, Gadchiroli and others) and other judgment in case of Jyoti d/o Shrawan Dhone vs. Scheduled Tribe Caste Scrutiny Committee, Nagpur and others (unreported) dated 18.6.2013 in W.P.No.6398/2012. He states that when a relative has been given validity, that itself is sufficient and no further inquiry in the matter is essential. He is relying upon the judgment reported in **2011 (6) Mh.L.J. 919** (Anand Vs Committee for Scrutiny and Verification of the Tribe Claims and others).

3. Learned A.G.P. has produced revenue record for perusal. She submits that the oldest document of original ancestor has been looked into. That document is a revenue record (Bandobast entry) for the year 1912-13 and in it caste has been recorded as 'Bhor Mani'. She also points out that there has been some tampering and interpolation in that document. She further contends that this interpolation has been put to petitioner and petitioner has failed to explain it. According to her, the validity on which the petitioner is placing reliance has been issued because of orders of Hon'ble Apex Court in Civil Appeal No.5270/2004 and at that juncture no vigilance inquiry or then any affinity test was carried out. She, from record submits that 12 validities about which claim has been made in rejoinder, are also given because of said judgment of Hon'ble Apex Court without undertaking any vigilance inquiry and without applying affinity test. On the basis of statement in affidavit filed, she states that Scrutiny Committee intends to reopen those validities.

4. Shri Parsodkar has pointed out that in todays

situation when the society is much more convergence and liberal, affinity test may have lost its significance. He is again relying upon above mentioned judgment of Hon'ble Apex Court.

5. After hearing respective counsel, we find in present facts that the Scrutiny Committee has rejected caste claim only because of the *Bandobast* entry of the year 1912-13. The said document admittedly was not pressed into service by petitioner and it has been collected by respondents during vigilance inquiry. The date on which document has come into existence is not apparent. The vigilance officer has noticed some interpolation or tampering in the document and accordingly has stated that the word 'Bhor Mani' has been altered to read to the word 'Bhor Mana'. Though in notice given to petitioner along with vigilance report this fact has been mentioned, Scrutiny Committee has not recorded the finding that petitioner is Bhor Mana. The Scrutiny Committee has observed that entry as 'Bhor Mani'.

6. The later two documents on which petitioner has placed reliance are also of ancestors and blood relatives. The document in relation to Damodar shows that Damodar is born on 4.2.1911 and his name was removed from school on 3.7.1923. His caste has been recorded as 'Mana'. Similarly, Mahadeo is shown as born on 1.7.1908 and his caste is recorded as 'Mana'. Mahadeo was removed from school on 30.4.1922. These documents are not found to be tampered with by the Scrutiny Committee. The date on which said entries have been taken are not disclosed anywhere in the judgment.

The Scrutiny Committee, however, has observed that a child in those days could not have been admitted to school before he completed six years of age.

7. In this situation, when Scrutiny Committee gets a document which according to it is tampered with and two equally old documents which petitioner produced and which it did not find interpolated and tampered, the question is whether the tampered document only, because it mentions some other caste, could have been used against petitioner. The fact that petitioner has not produced that document is already mentioned by us supra. The document has been unearthed by vigilance cell during inquiry. The Scrutiny Committee, however in the present facts has also applied affinity test and found that on affinity, petitioner does not belong to 'Mana' Scheduled Tribe.

8. In validity issued to blood relative Jitendra, the Civil Appeal and directions of Hon'ble Apex Court are expressly mentioned. It is pointed out here that that certificate of validity has been given on 22.2.2007 without any vigilance inquiry or then applying affinity test.

9. Taking overall view of the matter, we find that a case for fresh look into the matter is made out. The Scrutiny Committee has to consider the so called oldest document and if it is tampered why it should be used against petitioner. It has also to find out why later two documents which are not tampered should not be used in favour of petitioner. The Scrutiny Committee has to evaluate the import of other material on record.

10. Only to facilitate that exercise, we quash and set aside the order dated 4.6.2015.

11. We direct the petitioner to appear before respondent no.1 Scrutiny Committee on 4.5.2016 and to abide by its further instructions in the matter. The Committee shall attempt to complete this exercise within next three months.

Education and performance of petitioner on the basis of caste certificate shall be subject to further order of Scrutiny Committee in the matter.

With these directions, we dispose of the petition. No costs.

JUDGE

JUDGE

Hirekhan.