

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

WRIT PETITION NO. 952 OF 2021

Achal D/o. Dnyaneshwar Narnaware,
Aged about 20 years, Occ. Student,
R/o. At Post – Mouda, Dishant Nagar,
Near Blue Diamond Bar, Ramtek Road,
Mouda.

... **Petitioner**

.. **Versus** ..

The Vice-Chairman/Member Secretary,
Scheduled Tribe Caste Certificate
Scrutiny Committee, Adiwasi Vikas Bhavan,
Giripeth, Nagpur

... **Respondent**

Ms. Preeti D. Rane, Advocate for petitioner.
Ms. H.N. Jaipurkar, AGP for respondent/State.

**CORAM : A.S. CHANDURKAR AND
SMT. M.S. JAWALKAR, JJ.**

DATED : 23.03.2022.

ORAL JUDGMENT (Per : Smt. M.S.Jawalkar, J.)

Rule. Rule made returnable forthwith. Heard the
learned counsel for the parties.

2. The petitioner is aggrieved by invalidation of her
Tribe claim belonging to ‘Mana’ Scheduled Tribe made by order
of Scheduled Tribe Caste Certificate Scrutiny Committee
(hereinafter referred to as ‘the Scrutiny Committee’) dated

14/01/2021. It is contention of the petitioner that after HSSC, she appeared for JEE and CET Examination and for the same, she had received certificate issued by the Competent Authority as belong to 'Mana' Scheduled Tribe. That the caste claim of the petitioner of 'Mana' Scheduled Tribe came to be forwarded to the Scrutiny Committee vide a communication dated 19/07/2019. The petitioner submitted the following documents in support of her caste claim.

- Caste certificate of the petitioner dated 15/06/2018.
- College Leaving Certificate of the petitioner dated 16/07/2020.
- School Leaving Certificate of the petitioner's father of 4th Standard dated 27/06/2019.
- School Leaving Certificate of the petitioner's father of 10th Standard.
- School Leaving Certificate of the petitioner's cousin great grandfather namely Bhagwan (1920/1927/1933) of 4th Standard dated 12/06/2018.
- School Leaving Certificate of the petitioner's cousin grandfather namely Baburao (1947/1968/1969) of 10th Standard.
- Extract of son (Shriram) born to the petitioner's great grandfather namely Anaba Mana dated 15/12/1944.
- School Leaving Certificate of the petitioner's cousin uncle (1956/1968/1970) dated 27/07/2000.
- Family Tree

3. There are many documents prior to 1950 period i.e. (i) School Leaving Certificate of the petitioner's cousin great grandfather namely Bhagwan i.e. 1920/1927/1933, (ii) School Leaving Certificate of the petitioner's cousin grandfather namely Baburao i.e. 1947/1968/1969 and (iii) Extract of son (Shriram) born to the petitioner's great grandfather namely Anaba Mana dated 15/12/1944 recorded his caste as Mana. Apart from these documents, the petitioner placed on record the School Leaving Certificate of the petitioner's cousin uncle of 1956/1968/1970 showing his caste as Mana.

4. After inquiry of the vigilance cell, the copy of report was furnished to the petitioner. The petitioner was submitted reply. The Vigilance Officer has procured only entry of 1912-1913 in vigilance inquiry. The petitioner submitted that though it shows the entry 'Kunbi', it also shows 'Manya'. The petitioner in reply to the vigilance report, submitted that the entry 'Kunbi' is an occupation of agriculturist, therefore, the same must have been incorporated in the said document.

5. Ms. Rane, the learned counsel for the petitioner submitted that the Scrutiny Committee failed to appreciate four documents in respect of the petitioner's forefather and relied on

the entry of 'Kunbi', 'Mana of 1912. It is also further contended that the petitioner answered all the questions put forth as regards the affinity so also filed detailed reply to that effect before the Caste Scrutiny Committee, still the committee failed to discuss the same and in absence of the same, arrived at above conclusion. The Scrutiny committee at the time of applying affinity, failed to consider the guidelines laid down in Madhuri Patil's case as well as the ratio laid down in Anand's case. She further relied on case of **Shilpa Thakur Vs. State of Maharashtra reported in 2009(3) Mh.L.J. 995** wherein Full Bench has held that the affinity is the integral part for verification of the caste claim of the candidate and the Caste Scrutiny Committee is a committee appointed of experts and should be manned with the necessary infrastructure.

6. The petitioner relied on the following citations in support of her contentions,

(i) **Gajanan S/o. Pandurang Shende Vs. Head-Master Govt. Ashram School, Dongargaon Salod and others reported in 2018 (2) Mh.L.J. 460,**

(ii) **Gitesh S/o. Narendra Ghormare Vs. Scheduled Tribe Certificate Scrutiny Committee, Nagpur and others reported in 2018 (4) Mh.L.J. 933.**

(iii) **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others reported in 2011 (6) Mh.L.J. 919.**

(iv) **Shilpa Thakur Vs. State of Maharashtra reported in 2009(3) Mh.L.J. 995.**

(v) **Mana Adim Jamat Mandal Vs State of Maharashtra, reported in 2003 (3) Mh.L.J. 513.**

7. As against this, Ms. Jaipurkar, Assistant Government Pleader for respondent supported the order passed by the Scrutiny Committee and submitted that there is no need to interfere in the order as there is variance in the past record in respect of blood relations of the petitioner.

8. Heard both the parties. Perused record of Scrutiny Committee and documents placed on record. It appears that family tree is produced before the Cast Scrutiny Committee. There is no dispute about the said genealogy.

9. The family tree produced on record, which was also before the Caste Scrutiny Committee, shows clear relation of petitioner with Bhagwan, Baburao and Anaba Mana. The document i.e. school leaving certificate showing caste of Bhagwan Lahanu as 'Mana', in the said school leaving certificate, it is mentioned his date of birth as 01-07-1920 and

he was in the school for the period from 03/01/1927 to 31/03/1933, so also school leaving certificate showing caste of Baburao Bhagwan Narnaware as 'Mana', in the said school leaving certificate, it is mentioned his date of birth as 01-07-1947, extract of son (Shriram) born to the petitioner's great grandfather namely Anaba Mana dated 15/12/1944 showing his caste as 'Mana' and school leaving certificate showing caste of petitioner's cousin uncle as 'Mana'. As such there are many documents prior to 1950 having great probative value, showing forefathers of the petitioner belonging to Mana. The different entries i.e. Mana, Manaya, Mani Ku. have to be treated as 'Mana' in view of judgments of this Court in **Gitesh Ghormare** (supra). The said issue is covered by the judgment of this Court in **Gitesh Narendra Ghormare** (supra) wherein this Court held that -

"If there are number of documents containing different kinds of entries of caste/tribe like 'Mana', 'Mane', Mani', 'Mana Kunbi', Kshatriya Mana', 'Khand Mana', 'Maratha Mana' and so on, the duty of the Court will be to ascertain the dominant entries having greater probative value and record a specific finding of conclusive nature as to whether entries can be construed as 'Mana Scheduled Tribe', which is an entry in the cluster of tribes at Serial No.18 in the Constitution (Scheduled Tribes) Order. Merely because certain documents indicate entry of caste/tribe other than 'Mana' is not enough to reject the claim. What is prohibited is that the entry

‘Mana’ in Scheduled Tribes Order does not include or exclude the entries like ‘Mana Kunbi’, ‘Kshatriya Mana’, ‘Khand Mana’ ‘ Maratha Mana’, ‘Kunbi Mana’ and so on, which are probably known to exist as separate caste/tribe or sub-caste/tribe. The interpretation, clarification, explanation of the entries in the Scheduled Tribes Order is not permitted. The interpretation of entries in the documents cannot be confused with the interpretation of entry in the Scheduled Tribes Order. It is not the finding of the Committee that the father of the petitioner obtained the caste validity certificate by playing a fraud or that the grant of certificate was without jurisdiction. On the contrary, the certificates indicate that the same are issued in view of the decision of the Apex Court. A merely different view on the same facts in a subsequent case of blood relative would not entitle the Committee to reject the claim. Therefore, the Committee ought to have validated the certificate in favour of the petitioner. The order passed by the Scrutiny Committee invalidating the claim of the petitioner for ‘Mana Scheduled Tribe’ cannot be sustained.”

It is further held that, ‘the petitioner having conclusively established his claim for ‘Mana Scheduled Tribe’ on the basis of the documents having probative value, there was no occasion for the Scrutiny Committee, to raise a doubt and invoke the affinity test to hold that the petitioner has failed to establish his claim’.

Concept of recognized Scheduled Tribe for the purposes of giving benefits and concessions was not prevailing prior to 1950 and, therefore, only caste or community to which a person belonged was stated in the birth, school and revenue records

maintained. The documents are issued in the printed formats, which contain a column under heading "Caste" and there is no separate column of 'Tribe'. While entering the name, the distinction between the caste and tribe is ignored. It is the entire 'Mana' community all over the State which is conferred a status of recognized Scheduled Tribe. No significance can be attached to the entry of 'Mana' in the 'Caste' column in the documents and to reject the claim for 'Mana Scheduled Tribe' on that count. The finding of the Committee to that extent cannot, therefore, be sustained."

10. It is to be noted that in **Gitesh Ghormare** (*supra*), there was specific question put to the learned Assistant Government Pleader vide order dated 27/06/2018 as to whether 'Mana Kunbi' is a separate caste in existence. After taking instructions from the committee, the learned Assistant Government Pleader stated that there is no separate caste or tribe by name Mana Kunbi included in the list of Scheduled Caste, Scheduled Tribe, Other Backward Class and Special Backward Class category in the State of Maharashtra. This Court in **Gitesh Ghormare** (*supra*) observed in para-18 as under :-

"18. In the publication of Anthropological Survey of India, styled as 'People of India (Maharashtra), Volume XXX, Part Two', it is stated that the caste 'Mana' is also known as 'Mane' or 'Mani'. It is stated that etymologically, the word 'Mana' was probably derived from the word 'Mannya' or 'Mann', i.e. honour, which the community held in high esteem. The Government Resolution dated 24-4-1985 also

highlights the position that 'Mana' is known as 'Mane', 'Mani'. The Committee also does not dispute such position. It is neither the finding recorded by the Scrutiny Committee nor the fact that any separate caste or tribe or sub-caste/tribe as 'Mane', 'Mani' or 'Mannya' exists in the State of Maharashtra. Such castes/tribes are also not shown in the list of Vimukta Jatis, Nomadic Tribes, Other Backward Classes or Special Backward Classes maintained by the State Government. It is, therefore, of no significance that the community is described as 'Mana', 'Mani', 'Mane' or 'Mannya' and the entries have to be treated as that of 'Mana'. The Committee has, therefore, erred in relying upon the entries of 'Mane' and 'Mani' to reject the claim."

11. As there was no concept of recognizing Scheduled Tribes for the purposes of giving benefits and concession prior to 1950, therefore, there is no question of raising any doubt while appreciating the probative value of documents prior to 1950, wherein the caste of the great grandfather of the petitioner is shown as 'Mana'.

12. In view of judgment in ***Mana Adim Jamat Mandal Vs State of Maharashtra, reported in 2003 (3) Mh.L.J. 513***, the Government Resolutions dated 24/4/1985, 19/06/1985 and 15/06/1995 on the basis of which 'Mana' community was sought to be divided artificially into different categories, like Badwaik Mana', 'Khand Mana', 'Kshatriya Mana', 'Kunbi Mana', 'Maratha Mana', 'Gond Mana', 'Mani'/ 'Mane', etc., for the grant

of benefits available to the Scheduled Tribes, did not survive. Thus, it is prohibited to interpret caste/tribe entries in the Constitution (Scheduled Castes/ Scheduled Tribes) order. If there are numerous document containing different kinds of entries of caste /tribe like 'Mana', 'Mane', 'Mani', 'Mana Kunbi' etc., it has to be seen that which one is the oldest and dominant entry having greater probative value and committee ought to have recorded specific finding of conclusive nature as to whether other entries can be construed as 'Mana' Scheduled Tribe as held in ***Gitesh*** (supra). The interpretation, clarification, explanation of the entries in Scheduled Tribes order is not permitted. The interpretation of the entries in the documents cannot be construed with the interpretation of entry in the Scheduled Tribes Order.

13. The Scrutiny Committee rejected the claim in spite of various genuine documents being placed on record including documents of pre-independence period and not considered the legal position explicitly clarified by the earlier judgment of the Hon'ble Apex Court as well as the Division Bench of this Court.

14. So far as application of affinity test, by the Scrutiny Committee is concerned, in view of ***Anand vs. Committee for Scrutiny and Verification of Tribe Claims and others reported in***

2011 (6) Mh.L.J. 919, it is not justified. Affinity test may be used to corroborate the documentary evidence and not to be used as a sole criterion to reject the claim. It is observed by the Hon'ble Apex Court that, 'a few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe'. When the documents clearly reveal the entry to be 'Mana', then in that case, affinity test should not be given much weightage to and alongwith the affinity, the documents should have also been taken into consideration.

15. In view of the pre-Constitutional documents of 1920, 1927, 1933, 1944 & 1947 and other subsequent consistent entries, the Committee was not justified in invalidating the claim for failure to satisfy the affinity test. The Committee considered the irrelevant material and failed to appreciate the old documents of pre 1950 period. The impugned

order of the Scrutiny Committee is thus unjustified, unsustainable in law and liable to be quashed and set aside. Accordingly, we pass the following order:

ORDER

The order passed by the Scheduled Tribes Caste Certificate Scrutiny Committee, Nagpur Division, Nagpur, dated 14/01/2021 is set aside. It is declared that the petitioner has proved that she belongs to 'Mana' Scheduled Tribe which is Entry No. 18 of the Constitution (Scheduled Tribes) Order, 1950. The Scrutiny Committee shall within a period of six weeks from the date of production of this order issue a validity certificate to the petitioner.

Rule is made absolute in the aforesaid terms with no order as to costs.

[SMT. M.S. JAWALKAR, J.]

[A.S. CHANDURKAR, J.]

B.T.Khapekar