

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

WRIT PETITION NO. 909/2021

Yashwant S/o Manohar Ghodmare,
Aged about 19 yrs, Occ. Student,
R/o At-Post Kalambi, Tah. Kalmeshwar, Distt. Nagpur.

PETITIONER

.....VERSUS.....

1. The Vice-Chairman/Member Secretary,
Scheduled Tribe Caste Certificate Scrutiny Committee,
Adiwasi Vikas Bhavan, Giripeth, Nagpur.
2. The Principal, K.Z.S. Science College, Bramhani
Kalmeshwar, Tah. Kalmeshwar, Distt. Nagpur.
3. The Vice-Chancellor/Registrar,
Rashtrasant Tukdoji Maharaj Nagpur University,
Nagpur.

RESPONDENTS

Ms Preeti D. Rane, counsel for the petitioner.
Mrs. T.H. Khan, Assistant Government Pleader for the respondent no.1.
None for the respondent nos.2 and 3.

CORAM : A. S. CHANDURKAR AND M.W. CHANDWANI, JJ.

DATE : NOVEMBER 14, 2022.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The challenge raised in this writ petition is to the order passed by the Scrutiny Committee dated 30.07.2018 thereby invalidating the tribe claim of the petitioner of belonging to 'Mana' Scheduled Tribe.

3. It is the case of the petitioner that he and his forefathers belong to 'Mana' Scheduled Tribe. To substantiate such claim the petitioner sought to rely upon various old documents including the revenue extract of the years 1892-1896 in respect of the great great grandfather of the petitioner and the School Leaving Certificate dated 18.09.1922 of the great grandfather of the petitioner. The Scrutiny Committee while considering these old documents preferred to rely upon a document of the year 1912-13 which had the entry 'Kunbi'. It also relied upon another document of the year 1922 with the entry 'Kunbi Mana'. On that count it was held that the documents relied upon by the petitioner did not substantiate his claim. As regards the aspect of affinity the Scrutiny Committee preferred to refer to the area affinity test and found that the petitioner and his forefathers did not hail from the area where members of the 'Mana' community were found. It was also observed that the petitioner and his family members did not indicate the traits of members of the 'Mana' community. On that count, the tribe claim of the petitioner was invalidated.

4. The learned counsel for the petitioner referred to the documents of the years 1892-1896 as well as the School Leaving Certificate issued to Shankar Zibal in 1922 who was the great grandfather of the petitioner. It was submitted that since the old documents relied

upon by the petitioner had entry 'Mana' due weightage ought to have been given to those old documents. By relying upon the subsequent documents of the years 1912-13 and 1922 the claim could not have been invalidated. The old documents having been verified by the Vigilance Cell they were entitled to due weightage. By failing to consider the said documents the Scrutiny Committee committed an error. It was then submitted that while considering the aspect of affinity the area restrictions were sought to be relied upon for depriving the petitioner of affinity. The yardsticks applicable for 'Thakur' Scheduled Tribe were sought to be applied in the present case which was not justified. Except by referring to the old texts it was observed that the petitioner did not have affinity with 'Mana' Scheduled Tribe. In support, the learned counsel for the petitioner relied upon the decisions in *Gajanan Pandurang Shende Versus Head-Master, Govt. Ashram School, Dongargaon Salod & Others* [2018(2) Mh.L.J. 460], *Gitesh Narendra Ghormare Versus Scheduled Tribe Certificate Scrutiny Committee, Nagpur & Others* [2018(4) Mh.L.J. 933] and *Umesh Ganeshrao Jambhore Versus Vice-Chairman/Member-Secretary, Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati & Others* [2022(3) Mh.L.J. 31]. It was thus submitted that the order passed by the Scrutiny Committee was liable to be set aside and a validity certificate ought to be issued to the petitioner.

5. The learned Assistant Government Pleader for the respondent no.1 supported the impugned order. She produced the record maintained by the Scrutiny Committee and submitted that after considering the overall material on record the Scrutiny Committee was justified in turning down the claim of the petitioner. The old documents had various entries including the entries 'Kunbi', 'Kunbi Mana' and so on. Therefore it was clear that the documentary material did not support the case of the petitioner. Even the affinity test was not duly satisfied by the petitioner which was clear from the answers given to the questionnaire as submitted. Hence no interference with the impugned order was called for.

6. We have heard the learned counsel for the parties and we have perused the record maintained by the Scrutiny Committee. It is seen that the petitioner has relied upon the old documents of the years 1892-1896 of his great great grandfather which bears the entry 'Mana'. There is yet another School Leaving Certificate dated 18.09.1922 of the great grandfather of the petitioner with the entry 'Mana'. It is also seen that there are other documents of the years 1912-1913 and 1922 with the entry 'Kunbi Mana'. The Scrutiny Committee while considering Issue No.1 has merely brushed aside the old documents of the years 1892-1896 and 1922. No cogent reasons have been given for discarding those

documents despite the fact that they had the entry 'Mana'. If the Scrutiny Committee desired to discard the old documents it ought to have assigned reasons for the same. Instead it sought to rely upon the subsequent documents of the year 1912-1913 and 1922 on the ground that the entry shown was 'Kunbi Mana'. We find that it was necessary for the Scrutiny Committee to have specifically considered the document of the years 1892-1896 and the School Leaving Certificate dated 18.09.1922 alongwith the entries made therein.

7. As regards the aspect of affinity is concerned, it is seen that the Scrutiny Committee has referred to the aspect of area affinity and has observed that the petitioner could not establish the same. However while discussing Point No.4 in the impugned order, the Scrutiny Committee has referred to the decisions applicable with regard to 'Thakur' Scheduled Tribe. It was necessary for the Scrutiny Committee to have considered the decisions rendered especially with regard to 'Mana' Scheduled Tribe. We also find that while answering Issue No.9 no specific reasons have been mentioned as to how the petitioner had failed to establish cultural affinity with members of the 'Mana' community. Except for stating that the answers given by the petitioner to the questionnaire were not satisfactory there is no further discussion. It was necessary for the Scrutiny Committee to have independently considered the aspect of affinity.

8. Thus on perusing the records of the Scrutiny Committee and the reasons assigned by it coupled with the decisions of this Court in *Gajanan Pandurang Shende* and *Gitesh Narendra Gormare* (supra) we find it necessary to direct the Scrutiny Committee to decide the petitioner's tribe claim afresh by specifically considering the oldest documents and by applying the proper affinity test. Adjudication of the tribe claim would definitely affect the petitioner and his family members and hence consideration of the documents in detail alongwith affinity with 'Mana' community is necessary. Thus for failure to consider all the material on record and failure to apply the proper test pursuant to the decisions of this Court, the impugned order passed by the Scrutiny Committee is found to be not sustainable.

9. Hence for aforesaid reasons, the order passed by the Scrutiny Committee on 30.07.2018 is quashed and set aside. The proceedings are sent back to the Scrutiny Committee for deciding the petitioner's tribe claim in the light of the decisions referred to hereinabove after considering all the record. The Scrutiny Committee shall take a fresh decision in accordance with law and preferably within a period of four months from the date of the petitioner's appearance before the Scrutiny Committee. The petitioner shall appear before the Scrutiny Committee on 01.12.2022. All the points raised by the petitioner on merits are kept open.

10. The writ petition is disposed of in aforesaid terms. Rule accordingly. No costs.

(M.W. CHANDWANI, J.)

(A.S. CHANDURKAR, J.)

APTE