

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

WRIT PETITION NO. 3564 OF 2021

PETITIONER

Mangesh s/o Ganeshrao Jambhore
Aged about 34 years, Occ: Service,
R/o Kamathwada, Taluka – Darwa,
District- Yavatmal

VERSUS

RESPONDENTS

1. The Vice-Chairman/Member-Secretary, Scheduled Tribe Caste Certificate Scrutiny Committee, Chaprashipura, Amravati Division, Amravati.
2. The Superintendent of Police, Gadchiroli.

Ms P.D. Rane, counsel for the petitioner.

Ms N.P. Mehta, Assistant Government Pleader, for the Respondents.

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

DATE : 03/02/2022

ORAL JUDGMENT : (PER SMT. M.S. JAWALKAR, J)

1] **Rule.** Rule made returnable forthwith.

2] Considering the urgency in the matter, the matter is heard finally at the stage of admission and by consent of the parties.

3] The petitioner is aggrieved by invalidation of his Tribe Claim of belonging to “Mana” Scheduled Tribe made by the order dated 09/08/2021, passed by the Respondent No.1- Scheduled Tribe Caste Certificate Scrutiny Committee.

4] Heard learned counsel for the Petitioner Ms P.D. Rane and Ms N.P. Mehta, learned Assistant Government Pleader for Respondents.

5] Learned counsel for the petitioner submitted that the petitioner claims to belong “Mana” Schedule Tribe at Entry Serial No. 18 in the Constitution (Schedule Tribe) Order 1950, has been invalidated by Schedule Tribe Certificate Scrutiny Committee, Chaprashipura, Amravati (for brevity referred as ‘Committee’) vide order dated 09/08/2021. She further submitted that the petitioner came

to be appointed as Police Constable from Schedule Tribe Category. The petitioner submitted proposal of verification of the caste claim before the Scrutiny Committee in 2012. The petitioner submitted his proposal along with extracts:-

- a] Extract of Dakhal Khariz of petitioner's father of the year 1958.
- b] Extract of school leaving of father of the year 1958.
- c] Extract of birth of son born to petitioner's great grandfather namely Sirpat dated 15th December, 1917.
- d] Extract of school leaving certificate of uncle Kailash, of 7th Standard and other documents.

Apart from these documents, various documents collected by Vigilance Cell were also placed before Committee. There are many documents of pre-independence period. As per report of Vigilance Cell in documents procured in connection with petitioners father, grand father and cousin relations of his father and great grandfather were indicating their social status as belonging to "Mana, Mani, Mane Kunbi". However,

entry in birth record which is oldest document reflects that a child born to Sirpat. His caste is shown as 'Mana'. The said document is of 15th December, 1917 the oldest one.

6. It is contended that the Police Vigilance Cell conducted inquiry and submitted its report dated 02nd April 2014. The petitioner submitted his reply to the said report and clarified in the said reply that how the adverse entries of 'Mane Kunbi', 'Mani Kunbi', 'Mane' and 'Mani', appearing in the said documents. However, in the oldest document of 1917, the entry of 'Mana', Schedule Tribe is clearly mentioned. The oldest document submitted by the petitioner is dated 15/12/1917 in respect of the great grandfather namely Sirpat, who is in blood relation and his name also exists in the family tree which is not in dispute. The said document being a document prior to 1950 is having greater probative value in the eye of law. That being the oldest document, the Vigilance Officer as well as the committee ought to have considered that document while deciding the caste claim of the petitioner. The said document was also

procured by the Vigilance Officer during the vigilance inquiry. The Scrutiny Committee gave unnecessary importance to those document in respect of their relative, Sheshrao and Ganesh, in which there is no date mentioned and remark column is also blank. All other documents are subsequent to 1917 document.

7. It is further submitted that the vigilance officer so also the Scrutiny Committee arrived at the conclusion that the caste, custom and tradition followed by the petitioner and her family member does not resemble with that of “Mana Schedule Tribe”. The petitioner’s contention is that if the document submitted by the petitioner clearly reveals the entry as ‘Mana’ then in that case affinity test should not be given much weightage, as there are no rules or any code to test the affinity as regards Mana Scheduled Tribe. There is no infrastructure available with the committee and the order passed by the caste scrutiny committee is only on the basis of some questionnaire without even knowing as to which tribe the costumes and traditions are matching. There has to be a

report of Vigilance Cell indicating ethnological traits, rituals/customs. Without there being any research and data, characteristic of tribe, the committee rejected the claim on the ground that there is no affinity shown with the tribe.

8. Learned counsel for the petitioner relied on following citations in support of her contention about the affinity test and caste validity :-

(a) Gajanan s/o Pandurang Shende v/s Head-Master, Govt. Ashram School, Dongargaon Salod and others reported in 2018 (2) Mh.L.J.

(b) Gitesh s/o Narendra Ghormare v/s Scheduled Tribe Certificate Scrutiny Committee, Nagpur and others reported in 2018 (4) Mh.L.J.

(c) Mrunali d/o Shamrao Wakade v/s The Vice-Chairman/Member Secretary, Scheduled Tribe Caste Certificate Scrutiny Committee, Gadchiroli and others, passed in Writ Petition No. 5171/2018 (Nagpur Bench), dated 30/08/2018.

(d) Manisha d/o Pundlik Dadmal v/s The Vice-Chairman/Member Secretary, Scheduled Tribe Caste Certificate Scrutiny Committee, Gadchiroli and others, passed in Writ Petition No. 5481/2018 (Nagpur Bench), dated 30/08/2018.

(e) Anand V/s Committee for Scrutiny and Verification of Tribe Claims and others reported in 2011 (6) Mh.L.J. 919.

9. Learned Assistant Government Pleader, Ms Mehta in reply submitted that the order passed by Scrutiny Committee refusing to grant validity certificate is perfectly justified and needs no interference. There is variance in the caste shown in the documents procured by the vigilance cell. She relied on citation *Priya Pramod Gajbe v/s State of Maharashtra 2018 Law Suit (Bombay) 2437* in support of her contention that in view of the discrepancies in the caste recorded in the document produce creates a doubt on its probative value.

10. We have heard both the counsel at length, considered documents placed on record and record maintained by Scrutiny Committee. Also considered the citations relied on by the parties. The oldest document dated 15/12/1917 of the great grandfather shows the caste as 'Mana'. This document was verified by the Vigilance Cell to

be genuine. Despite this, the tribe claim was not accepted as in the subsequent documents the entires were Mane Kunbi, Mani and Mane. In fact, 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 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.

11. It is to be noted that in *Gitesh (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 (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."

12. 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 document of the year 1917, wherein the caste of the great grandfather of the petitioner is shown as 'Mana'.

13. 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 is 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.

14. The Scrutiny Committee rejected the claim in spite

of various genuine documents being placed on record including documents of pre-independent 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. So far as citation relied on by learned Assistant Government Pleader, i.e. *Priya Gajbe* (supra) it appears that it is pronounced on 22/12/2018. It also appears that none of the parties have brought to the notice of the Court's, judgment in Gitesh (passed on 02/07/2018), Mrunal Urkude along with 9 other petitions (supra) (passed on 30/08/2018), Manisha Dadmal (passed on 30/08/2018) in which consistent view is taken. The Caste Scrutiny Committee cannot take different/contrary stand in two similar matters. In the matter of *Priya Gajbe* (supra) statement was made by the Caste Scrutiny Committee that in Vidharbha Region there exists a Mana Caste which is non-tribe and there is a vast distinction between this Mana Caste and Mana which is recognized as scheduled tribe. It is also submitted by the Caste Scrutiny Committee, this Mana Caste is sub-caste /caste of Kunbi, type of non-agricultural caste do

not bear any affinity with 'Mana' Scheduled Tribe whereas in the matter of *Gitesh Narendra Ghormare* (supra) in reply to specific question put to learned Assistant Government Pleader, by Court, learned Assistant Government Pleader on instructions submitted that there is no separate caste or tribe by name 'Mana Kunbi' included in the list of Scheduled Caste, Scheduled Tribe, Other Backward Class or Special Backward Category in the State of Maharashtra. Thus, it is not open to the committee to interpret entries as held in the above referred citations.

15. So far as application of affinity test, by the Scrutiny Committee is concerned, in view of Anand (supra) it is not justified. Affinity test may be used to corroborate the documentary evidence and not to be used as a sole criteria 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’.

16. In view of the pre-constitutional document of 1917 and other subsequent consistent entries, the Committee was not justified in invalidating the claim for failure to satisfy the affinity test. As regards the document dated 08/11/1942 the petitioner in his reply to the Vigilance Cell report has stated that the person named in that document was not related to the petitioner and that his name was not shown in the family tree. This aspect has been ignored by the Scrutiny Committee. The impugned order of Scrutiny Committee is thus not sustainable in law and liable to be quashed and set aside. Accordingly, we proceed to pass the following order:-

ORDER

- a] The order passed by the Scrutiny Committee on 09/08/2021 is set aside.

- b] It is declared that the petitioner has proved that he belongs to 'Mana' Scheduled Tribe which is Entry No.18 of the Scheduled Tribes Order, 1950. The Scrutiny Committee shall within a period of four weeks from the date of production of this order issue the validity certificate to the petitioner accordingly.
- c] The respondent No.2 shall take note of this adjudication while considering the service of the petitioner.
- d] Rule is made absolute in aforesaid terms. No costs.

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

[A.S. CHANDURKAR,J.]

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Signed By:RAJESH K
NANDURKAR

Signing Date:11.02.2022 17:29