

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

WRIT PETITION NO. 3672 OF 2021

Hemlata Gulabrao Narnaware,
 (Aged about 51 years),
 Occupation-Service – ‘Assistant Teacher’,
 C/o. Bhaskar Shankarrao Chaukhe,
 Kashinathnagar 40, Borkar Layout,
 Umred Road, Dighori,
 Nagpur-440 034.

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Petitioner

.. Versus ..

1. The Scheduled Tribe Certificate
 Scrutiny Committee, Amravati,
 Through its Member Secretary,
 Deshmukh Building, Irvin Chowk,
 Morshi Road, Amravati-444 601,
 tescamr.mah@nic.in.
2. Navpratibha High School,
 Through its Head Master,
 Aptur, Tah. Umred, Distt.Nagpur
 Aptur-441 203.
3. Chief Executive Officer, Zilla Parishad,
 Nagpur, Through its Education Officer
 (Secondary), Zilla Parishad,
 Civil Lines, Nagpur-440 001.

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Respondents

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Shri Sunil P. Khare, Advocate a/w Shri Narayan D. Jambhule, Advocate
 for the petitioner,
 Shri Neeraj Patil, A.G.P. for respondent nos.1 and 3/State,
 Shri N.S. Khubalkar, Advocate for respondent no.2,
 Shri M.M. Sudame, Advocate for intervenor (CAW No.403/2022).

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CORAM : A.S. CHANDURKAR AND SMT. M.S. JAWALKAR, JJ.
DATED : 24.03.2022.

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

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

2. The challenge in this petition is to the order of invalidation of the caste claim of the petitioner by the Scheduled Tribe Certificate Scrutiny Committee, Amravati (hereinafter referred to as 'Scrutiny Committee'). The petitioner claims to belong to 'Mana' Scheduled Tribe, which is Entry No.18 of the Constitution (Scheduled Tribe) Order, 1950.

3. The petitioner has been conferred with the Scheduled Tribe Certificate of 'Mana' Scheduled Tribe by Sub Divisional Officer, Morshi, District-Amravati. The petitioner submits that she has placed many old documents prior to 1950 showing her forefathers belonging to 'Mana'. The School Leaving Certificate in respect of her father Gulabrao and uncle Madhukar Narnaware showing that they belong to 'Mana' Scheduled Tribe which is of the years 1934 and 1938 respectively. She also placed reliance on other documents, which are subsequent to 1950 showing consistently 'Mana'. It is submitted that the petitioner came to be appointed as Assistant Teacher on 27.09.1999.

4. The learned counsel for the petitioner submits that the validity certificate issued to the petitioner's brother Rajendra Narnaware has been discarded on the ground that it was issued without conducting any vigilance enquiry. As there is no allegation by the Scrutiny Committee that the said documents were obtained by misrepresentation or fraud, there was no reason to discard the said document in respect of her brother. There are documents of the year 1934 which records "Mana" entry in the name of blood relative of the petitioner, has been ignored by the Caste Scrutiny Committee. There is 1912 document which records entry in respect of one Shrawan Zingrya. However, the blood relation with the said Shrawan Zingrya has not been established. It is further submitted that even if there are entries in respect of some of the relatives as "Mani", it ought to have treated as "Mana". The learned counsel submitted that the Caste Scrutiny Committee unjustly rejected his tribe claim towards "Mana Scheduled Tribe". It fails to evaluate properly not only documentary evidence but also the affinity towards the "Mana" Community. She placed on record the document dated 22.06.1934 in respect of her father whose caste shown as "Mana" in Primary School Leaving Certificate, so also she placed on record her uncle's caste showing as Mana, dated 23.04.1938. In support of her contentions, the learned counsel for the petitioner has relied on following decisions :

- (i) *Palghat Jilla Thandan Samudhaya Samrakshna Samithi and another .vs. State of Kerala and another, (1994) 1 SCC 359.*
- (ii) *Mana Adim Jamat Mandal Vs State of Maharashtra, 2003 (3) Mh.L.J. 513.*
- (iii) *Anand Katole .vs. Committee for Scrutiny and Verification of Tribe Claims and others, (2012) 1 SCC 113 and*
- (iv) *Gitesh S/o Narendra Ghormare Vs. Scheduled Tribe Certificate Scrutiny Committee, Nagpur and others, 2018 (4) Mh.L.J. 933,*

5. Per contra, the learned Assistant Government Pleader submitted that just because validity certificate was granted to the brother of the petitioner will not entitle the petitioner to get the certificate as belonging to “Mana Scheduled Tribe”. It is contended that the validity certificate issued without any enquiry by the Caste Scrutiny Committee will not give any right to other blood relatives to get the validity on that basis. The order passed by the Caste Scrutiny Committee is perfectly justified.

6. Heard both the parties at length. The family tree reproduced in the decision of the Caste Scrutiny Committee. The petitioner disputed that the document pertaining to one Shrawan Zingrya dated 8.8.1912 wherein his caste is recorded as “Mani” is in her relation, however, there are other documents i.e. (1) dated 22.6.1934 in respect of Gulab Ramchandra Narnaware, who is father of the petitioner, recorded

him as “Mana”, (2) dated 21.6.1937, extract of birth/death record shown as sister of petitioner namely Kalawati Mard Suratram as “Mani Bhor” (submitted by Vigilance Cell), (3) dated 16.1.1937 extract of birth/death record of village Pusla in respect of one Ajabrao s/o Rama, however, relationship was not mentioned by the Vigilance Cell and (4) dated 23.4.1938 extract of record of School (Dakhal Kharij) of village Pusla in respect of Madhukar Ramchandra i.e. uncle of the petitioner, recorded as Mana. So far as document in respect of one Shrawan Zingrya, the petitioner disputed relationship with the said person. There is nothing on record to show that these persons are in relation with the petitioner.

7. As held in Palghat Jilla (*supra*), the petitioner is known in the Society as belonging to “Mana community” which is included in the Presidential Scheduled Tribe list. Thus, petitioner deserves to be recognized as “Mana”, even if some of her relatives are also known as “Mani”. It is submitted by learned counsel for the petitioner that this issue is also covered by the judgment of this Court in ***Gitesh S/o Narendra Ghormare (supra)***.

8. We have heard both the counsel at length and considered the documents placed on record and record maintained by the Scrutiny Committee. We have also heard the learned counsel for the intervenor who sought to oppose the claim of the petitioner.

9. The family tree produced on record which was also before the Caste Scrutiny Committee which shows clear relation of petitioner with Gulab Ramchandra Narnaware, Kalawati Mard Suratram, Ajabrao Rama and Madhukar Ramchandra. The family chart is as under :

Sr.No	Type of Document	Name on Documents	Relationship with Applicant	Caste Recorded	Date of Evidence	Remarks
1	Kotwal Book	Shrawan Zingrya	Great Grandfather	Mani	8.8.1912	Submitted by vigilance cell
2	School record of village Pusla, Tq. Warud	Gulab Ramchandra Narnaware	Father	Mana	22.6.1934	Submitted by applicant
3	Death record of village Pusla, Tq. Warud	Kalawanti Mard Suratram	Sister	Mani Bhor	21.6.1937	Submitted by vigilance cell
4	Death record of village Pusla, Tq. Warud	Ajabrao S/o Rama	Relationship not mentioned	Mani	16.1.1937	Submitted by vigilance cell
5	School record (Dakhal Kharij) of village Pusla, Tq. Warud	Madhukar Ramchandra	Uncle	Mana	23.4.1938	Submitted by vigilance cell
6	Kotwal Book	Ramu Zingra	Grandfather	Bhor Mani	8.9.1920	Submitted by vigilance cell
7	Kotwal Book	Ramu Zingra	Grandfather	Bhor Mani	21.9.1921	Submitted by vigilance cell
8	Kotwal Book	Fakira Zingra	Cousin Grandfather	Bhor Mani	23.10.1935	Submitted by vigilance cell
9	Kotwal Book	Madhukar Ramchandra	Cousin Uncle	Mani	7.7.1962	Submitted by vigilance cell
10	School extract Register	Gulab Ramchandra	Father	Mana	22.6.1934	Submitted by vigilance cell

As such there are many documents prior to 1950 showing forefathers of the petitioner belonging to Mana , Mani, Bhor Mani. 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). 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 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. This Court further 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 document of the year 1950, wherein the caste of the father, uncle of the petitioner is shown as 'Mana'.

12. In view of judgment in ***Mana Adim Jamat Mandal Vs State of Maharashtra (supra)***, 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.

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 (supra)*, 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'.

15. In view of the pre-Constitutional documents of 1937 and 1938 and other subsequent consistent entries, the Committee was not justified in invalidating the claim for some variation in recorded entries as for failure to satisfy the affinity test. The Committee considered the document of the person which is not in relation to the petitioner. There is no finding that 'Mani/Bhor Mani' is a distinct caste recognized in the State of Maharashtra. As such even if it is presumed that the persons who are recorded as "Bhor Mana" and "Bhor Mani" are in relation with the petitioner still they have to be treated as "Mana". The Caste Scrutiny Committee is not justified in invalidating the caste claim of the petitioner in spite of the documents in respect of petitioner's father and uncle which are of pre-constitutional era. Thus the impugned order of the Scrutiny Committee is unsustainable and liable to be quashed and set aside. Accordingly we pass the following order :

ORDER

- (i) The order of the Scrutiny Committee dated 19.07.2021 is set aside. It is declared that the petitioner has proved that she belongs to “Mana” Scheduled Tribe which is Entry No.18 in the Constitution (Scheduled Tribes) Order, 1950.
- (ii) The Scrutiny Committee shall within a period of four weeks from the receipt of copy of this order, issue a validity certificate to the petitioner.
- (iii) Rule is made absolute in aforesaid terms. Civil Application (CAW) No.403/2022 is also disposed of. No costs.

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

[A.S. CHANDURKAR, J.]

Gulande