

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

WRIT PETITION NO. 4106 OF 2021

Atharv Rajendra Narnaware
 (Aged about 19 years),
 Occupation-Student,
 'Aspirant to pursue BE course',
 Original Resident of town 'Pusla'
 District-Amravati, as well as Nagpur,
 Address of Correspondence :
 C/o. R.G. Narnaware,
 Plot No.35, Agney Layout, Khamla,
 Nagpur-440 025.

..

Petitioner

.. Versus ..

1. The Scheduled Tribe Certificate
 Scrutiny Committee, Amravati,
 Through its Member Secretary,
 Deshmukh Building, Irvin Chowk,
 Morshi Road, Amravati-444 601.
2. State of Maharashtra,
 Higher & Technical Education Department,
 Through its Principal Secretary,
 411, 4th floor, Mantralaya Annex,
 Madam Cama Road, Nariman Point,
 Mumbai-400 032.
3. State Common Entrance Cell,
 Government of Maharashtra,
 8th floor, New excelsior Building,
 A.K. Nayar Marg, Fort, Mumbai-400 001.

..

Respondents

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 2/State,
Shri N.S. Khubalkar, Advocate for respondent no.3.

.....

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 Certificate of
‘Mana’ Scheduled Tribe by Sub Divisional Officer, Morshi, District-
Amravati. The petitioner submits that he has placed many old
documents prior to 1950 showing his father belonging to ‘Mana’. The
School Leaving Certificate in respect of his father Rajendra showing that
he belongs to ‘Mana’ Scheduled Tribe. He also placed reliance on other

documents, which are subsequent to 1950 showing consistently 'Mana'. It is submitted that the petitioner is a student and pursuing Bachelor of Engineering course.

4. The learned counsel for the petitioner submitted that this is second round of litigation as earlier his tribe claim was invalidated by the Caste Scrutiny Committee and therefore, he challenged the said order by filing Writ Petition No.684/2021. This Court pleased to remand the matter back for fresh decision. As held in **Anand Katole .vs. Committee for Scrutiny and Verification of Tribe Claims and others, (2012) 1 SCC 113**, the Committee is prohibited from gathering evidence to prove or disprove the claim. In the earlier petition, the petitioner pleaded that word "Bhor" should not be artificially included in the caste claim. It is contended that after remand, the Committee again objected the claim of "Bhor Mani" entries are found by the vigilance in several records. There is no finding that "Mani / Bhor Mani" is a distinct castes recognized in the State of Maharashtra. Documents of the years 1934, 1935, 1938, 1939 recording "Mana" entries in favour of the petitioner's claim. It is submitted that "pre-constitutional documents fetched higher degree of probative value", but amongst pre-constitutional documents "School records" furnishes better probative value over other records. "Mani" entries are not fatal to claim towards "Mana Scheduled Tribe" when there are some favourable pre-constitutional documents showing caste as

“Mana” exists. The petitioner further submits that caste/community entry ‘Mani’ has to be treated as “Mana”. The word “Mani” is but misspelt “Mana” caused due to ‘phonetic variation’ which is generally noticed especially in Vidarbha. The petitioner submits that expression “Bhor” should not have been considered as ‘prefix’ of the caste name “Mani”. It is used but as ‘suffix’ to first name, but not by every person who writes the record. To substantiate his claim, he produced one ‘birth record’ and one ‘TC’ pertaining to year 1924 and 1939 wherein petitioner’s cousin great grandfather’s name is written as “Fakir Bhor/Fakirbhor” and therein caste entry is shown as “Mani”. One more birth record document which pertains to year 1912 concerning real great grandfather where “Bhor” is not written at all by the writer of records and caste is mentioned as “Mani”. As regards entry “Mani” is concerned, the learned Counsel for the petitioner has relied on the decision of **Shubham Sharad Gadmade .vs. Scheduled Tribe Caste Certificate Scrutiny Committee, Nagpur**, to contend that the entry ‘Mani’ and ‘Mana’ with their mixed entries is not to be considered as fatal to the caste claim. As regards entry ‘Bhor Mani’ is concerned, learned counsel sought to urge that ‘Bhor Mani’ should be included in the entry. ‘Bhor’ is only a sequence of first name and therefore this entry should not be considered as fatal. In support of his contentions, the learned counsel 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. As against this, the learned Assistant Government Pleader submitted that just because validity certificate was granted to the blood relation of the petitioner will not entitled 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 Scrutiny Committee will not give any right to other blood relatives to get the validity on that basis. The order passed by the Scrutiny Committee is perfectly justified.

6. Heard both the parties at length. Perused record maintained and produced by the Scrutiny Committee. It appears that there is family tree placed on record. There are documents in respect of great grandfather of the year 15.08.1912 procured by the vigilance cell which is an extract of birth-death register recording caste of the great grandfather as ‘Bhor Mani’. There is no relationship of Shrarawan

Zingrya Mani substantiated by the Caste Scrutiny Committee. Even family tree does not disclose any name Shrarawan Zingrya. There is one document dated 08.09.1920 in respect of great grandfather of the petitioner which is extract of birth-death register recording as a “Bhor Mani”. Similarly document dated 21.09.2021 extract of birth/death register in respect of same Ramu Zigara blessed with one child. There is one document dated 27.07.1924 which is extract of birth-death register of village Pusla in respect of great grandfather and child blessed to Fakirbhor zingra recording as ‘Bhor Mani’. The other document dated 10.02.1932 that is School record of village Pusla in respect of grandfather Madhukar Ramchandra Zingraji submitted by the applicant wherein caste is shown as ‘Mana’. The other document is dated 22.06.1934 that is School record of village Pusla in respect of grandfather Gulab Ramchandra zingraji. The document dated 09.10.1935 in respect of School record of Maruti Fakir Bhor i.e. cousin grandfather of the petitioner and the caste is shown as ‘Mana’. The document dated 23.04.1938 of school record of village Pusla in respect of cousin grandfather Madhukar Ramchandra Zingraji wherein case is shown as ‘Mana’. The document dated 17.08.1939 of School record of village Pusla in respect of cousin grandfather Ganpat Fakir Bhor s/o Zingraji wherein caste is shown as ‘Mana’. Lastly one more document dated 15.06.1940 in respect of Land Record in the name of Fakirji Zingraji Mani, cousin great grandfather and real great

grandfather of the petitioner and the caste is shown as 'Mani.

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. She deserves to be recognized as belonging to 'Mana', even if some of her relatives are also known as "Mani". This issue is also covered by the judgment of this Court in *Gitesh S/o Narendra Ghormare (supra)*.

8. The family tree produced on record which was also before the Caste Scrutiny Committee which shows clear relation of petitioner with Fakir Bhor Zingra and Madhukar Ramchandra. The document i.e. extract of school record of village Pusla, it was registered in respect of grandfather of the petitioner dated 10.02.1932 showing caste of Madhukar Ramchandra s/o Zingraji as 'Mana'. Similarly, extract of school record of village Pusla maintained by the school authority showing Gulab Ramchandra as 'Mana' dated 22.06.1934. However there is also mention of 'Mana' in respect of Madhukar Ramchandra, the cousin grandfather, is of 1938. Document pertaining to the petitioner's grandfather Ramu is dated 15/08/1912 wherein he was shown as 'Bhor Mani'. Similarly another document of extract of birth record register of grandfather dated 21/09/1921 shown him as Bhor Mani. The document pertaining to great grandfather of the petitioner shown belonging to 'Bhor Mani' on 27/07/1924. The documents in respect of petitioner's

uncle Madhukar shown as 'Mana' in School record of village Pusla dated 10/02/1932. 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.

9. 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.”

10. 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 of the petitioner is shown as 'Mana'.

11. 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.

12. 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.

13. 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'.

14. In view of the pre-Constitutional documents of 1934, 1935, 1938, 1939 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 document of the person which is not in relation to the petitioner. It is not the claim of the Scrutiny Committee that there is any caste or tribe by name as 'Bhor Mana' or "Bhor Mani" in the scheduled entries. 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 09.09.2021 is set aside. It is declared that the petitioner has proved that he 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. No costs.

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

[A.S. CHANDURKAR, J.]

Gulande