



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

WRIT PETITION NO. 433 OF 2023

Smt. Bharti D/o. Manohar Sherkar @
 Sau. Bharti W/o. Giridhar Deogade,
 aged about 30 years, Occ:- Service,
 R/o. Pandhurna, Tahsil Kamptee,
 District Nagpur

.. **Petitioner**

Versus

1. The Schedule Tribe, Certificate Scrutiny Committee, Nagpur Division through its Member Secretary, Nagpur
2. Sanjay Babanrao Gawande
 Aged 50 years, Occ. Private
 R/o. Pandhurna, Tq. Kamptee
 Dist. Nagpur

.. **Respondents**

Mr. S. P. Bhandarkar, Advocate for Petitioner.
 Mr. A. A. Madiwale, AGP for respondent No.1.
 Mr. A. K. Madne, Advocate for respondent No.2.

CORAM : A. S. CHANDURKAR AND
ABHAY J. MANTRI, JJ.

DATED : 09/11/2023

ORAL JUDGMENT (Per : Abhay J. Mantri, J.)

Rule. Rule made returnable forthwith. Heard finally by the consent of the learned counsel appearing for the parties.

(2) The petitioner being disgruntled and aggrieved by the order dated 28/12/2022 passed by respondent No.1 i.e. the

Scheduled Tribe, Certificate Scrutiny Committee, Nagpur (hereinafter referred to as "the Scrutiny Committee"), thereby invalidating her claim that she belongs to 'Mana' Scheduled Tribe has challenged the said order in the present writ petition.

(3) The petitioner is a permanent resident of Pandhurna, District Nagpur. She belongs to the 'Mana' Tribe which is recognized as a Scheduled Tribe in the State of Maharashtra. On 18/01/2021, she was elected as Sarpanch in Gram Panchayat Khedi, Tahsil Kamptee, District Nagpur. Since she was elected in Gram Panchayat Khedi, she was required to submit the caste validity certificate before the Competent Authority. Accordingly, on 24/12/2020, she approached the respondent No.1 Scrutiny Committee through the online portal along with all necessary documents.

(4) Despite receipt of the application, respondent No.1 Committee has not decided her claim till the end of 2021, therefore, she preferred Writ Petition No.5215 of 2022, before this Court seeking direction against respondent No.1 to decide her application dated 24/12/2020 at the earliest. Vide order dated 13/09/2022, this Court has directed the respondent No.1 Scrutiny Committee to decide the tribe claim of the petitioner within three months. Accordingly, on 28/12/2022, respondent No.1 Scrutiny Committee decided the claim and thereby rejected her caste claim.

(5) Being aggrieved by the said order, the petitioner has preferred this writ petition. During the pendency of the writ petition, respondent No.2 Sanjay Babanrao Gawande moved an application to implead him as party respondent. Vide order dated 13/02/2023, he was added as respondent No.2.

(6) The learned counsel for the petitioner vehemently submitted that respondent No.1 Scrutiny Committee has not considered the documents of the pre-constitutional era, as well as other documents placed on record in its proper perspective, and erred in ignoring the same. The respondent No.1 Caste Scrutiny Committee has not considered documents i.e. record of rights dated 01/04/1923 of the great-grandfather of the petitioner, namely, Rajaram wherein his caste was mentioned as '*Mana*'. Secondly, he submitted that respondent No.1 Scrutiny Committee has not considered the Caste Validity Certificate issued in favour of her cousin brother Manish Ramesh Sherkar and thereby erred in discarding the same ignoring the ratio laid down in the case of ***Apoorva Vinay Nichale V/s Divisional Caste Certificate Scrutiny Committee No.1 and Others*** reported in ***2010 (6) Mh.L.J. 401***. Thus, he submitted that the impugned order passed by the Scrutiny Committee is illegal, arbitrary, and liable to be set aside.

(7) Learned Assistant Government Pleader for the respondent No.1 Scrutiny Committee strenuously argued that the Committee has considered the vigilance cell report, as well as documents on record, and rightly held that the petitioner failed to prove that she belongs to *Mana* caste. On the contrary, the documents produced on record show that she belongs to the Mani caste.

(8) Learned Assistant Government Pleader further canvassed that the validity certificate issued in favour of Manish and Shweta, son, and daughter of Ramesh Sherkar respectively, did not mention the social and cultural issue, but the same was obtained by them by concealing the material evidence from the record. Therefore, the said certificates are not helpful for the petitioner in support of her claim. Hence it is contended that the impugned order passed by the Scrutiny Committee is just, legal, and proper and no interference is required in it and prayed for dismissal of the petition.

(9) Learned counsel for respondent No.2 supported the said arguments and in addition to that it was submitted that the petitioner belongs to the *Mani* caste and performed marriage with Giridhar Deogade who belongs to 'Kunbi' caste, which comes under the OBC category. The said facts clearly indicate that the petitioner performed the marriage with the person from the OBC category and

therefore, she failed to prove that she belongs to the Scheduled Tribe category. Hence, he has prayed for the rejection of the petition.

(10) Having heard the rival contentions of the parties and perusal of the documents on record it appears that vide order dated 16/01/2023, this Court has protected the petitioner i.e. *"The petitioner shall not be disqualified on account of the order of invalidation until further orders."*

(11) On 21/12/2020, the Sub-Divisional Officer, Katol issued a certificate in favour of the petitioner stating that *"she belongs to the 'Mana' Tribe Sr.No.18 which is recognized as a Scheduled Tribe"*. Thereafter she applied to the respondent No.1 Scrutiny Committee for issuance of the caste validity certificate in her favour. In support of her claim, she has produced a document dated 01/04/1923 i.e. record of the rights of her great-grandfather, namely, Rajaram, wherein his caste is mentioned as *'Mana'*. Said document was neither disputed nor denied by the vigilance cell or respondent No.1 Scrutiny Committee. Therefore, there is no reason to disbelieve the said document. She has also produced other documents of the year 1909, 1927, and 1928 in respect of her ancestors, wherein their caste was shown as *Mani*, therefore, the respondent No.1 Caste Scrutiny Committee has observed that the oldest document is from the year 1909 and other two other

documents of the year 1927 and 1928 shows that ancestors of the petitioner belong to *Mani* caste, which is not included in the Scheduled Tribe list. In the entry at Sr.No.18, the caste '*Mana*' is included, therefore they had discarded the documents of the year 1923, but they have not disputed the same.

(12) It also appears that the vigilance cell twice conducted an enquiry and submitted its reports dated 08/09/2021 and 24/08/2022 along with the opinions of concerned authorities before the committee. In both the reports, they mentioned the entry dated 01/04/1923 in respect of the great-grandfather of the petitioner, namely, Rajaram, and his caste was mentioned as '*Mana*'. In the first report, the vigilance cell gave their opinion that the entry dated 01/04/1923 had been recorded in the revenue record, wherein it was shown that one baby boy was born to Rajaram and the caste of Rajaram was mentioned as '*Mana*'. Also, the Transfer Certificate of the year 1967, as well as one registered document shows that Manohar Sadashiv Sherkar belongs to the '*Mana*' caste. The same opinion is also reflected in the report dated 24/08/2022, but it was observed that below the endorsement of the entry dated 01/04/1923, the name of the person who signed the same is not mentioned, however, the stamp and signature appear there.

(13) Learned counsel for the petitioner relied upon the decision of the Hon'ble Apex Court in the case of ***Priya Gajbe vs. The State of Maharashtra and others, [Civil Appeal No.7117 of 2019]***, wherein, the Apex Court has considered the said fact and held that *"there is no caste named Mani. It is thus possible that there could be some mistake in writing when the caste was written. It is to be noted that the original record is written in Marathi and not in English. As such, such an error is quite possible, and it was held that the said error could not be deprived of the appellant therein for claiming that she belongs to the Mana caste. Therefore, it declared that the appellant therein belongs to the 'Mana' Schedule Tribe."*

(14) The observations made in the aforesaid judgment are squarely applicable to the case at hand and thus, we do not find substance in the contentions of the respondents in that regard. Thus, the findings of respondent No.1 Caste Scrutiny Committee appear to be contrary to the observations made in the case of ***Priya Gajbe*** (supra), and the same is liable to be set aside.

(15) Secondly, the Committee has observed that the validity certificates produced by the petitioner of her cousin's brother and sister i.e. Manish and Shweta were obtained by them by concealing the facts. Therefore, the committee has discarded the same and not taken into consideration. On 04/07/2008, the Scrutiny Committee, Nagpur issued validity certificates in favour of Manish and Shweta who are cousins i.e. brother, and sister of the petitioner. In the pedigree,

shown in the vigilance cell report, as well as in the order their names are mentioned. In fact, nothing has been brought on record to show that the same was obtained by them by committing fraud or concealing the facts from the authorities. Therefore, there is no reason to doubt/disbelieve the genuineness of the said documents.

(16) Per contra, as per the ratio laid down in the case of **Apoorva** (supra) the respondent No.1- Scrutiny Committee ought not to refuse the status of the petitioner akin to her cousins, who are her blood relatives. Moreover, to this date said certificates were neither challenged nor cancelled by the Competent Authority. Likewise, nothing has been brought on record to show that said certificates were issued by said Committee without having jurisdiction. Thus, the case of the petitioner is covered by the ratio laid down in the case of **Apoorva** (supra), hence the Committee ought to have issued a caste validity certificate in favour of the petitioner. But the Scrutiny Committee has not considered the said fact and relying upon some Judgments of this Court and Hon'ble Supreme Court, has observed that those certificates are not helpful for the petitioner in support of her claim, as said certificates were obtained by concealing the facts.

(17) The said Committee also relied upon the decision in the case of **Priya Gajbe** (supra) passed by this Court, as no stay has been granted by the Supreme Court to the said decision. However, it

seems that the Hon'ble Supreme Court vide order dated 11/07/2023 passed in Civil Appeal No.7117 of 2019, set aside the judgment passed by this Court and declared that the appellant therein belongs to the 'Mana' tribe and directed the Committee to issue a caste validity certificate in her favour. Having been so, the findings of the said Committee in that regard are incorrect and liable to be set aside.

(18) The Scrutiny Committee has further observed that the petitioner failed to prove the Affinity Test. In that regard, in our opinion, the said issue is also covered by the judgment in the case of **Priya Gajbe** (supra), wherein the Hon'ble Apex Court held that "*Affinity Test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe.*" It has been further observed that 'the claim by a person belonging to a Scheduled Tribe cannot *per se* be disregarded on the ground that his present traits do not match his tribe's peculiar anthropological and ethnological traits etc.' and therefore held that "*Affinity Test may be used to corroborate the documentary evidence, it should not be the sole criteria to reject the claim.*"

(19) In view of the above, in our opinion, the findings given by the respondent No.1 Scrutiny Committee on that point are *per se* contrary to the observations of the Hon'ble Apex Court, therefore, the same is liable to be quashed and set aside.

(20) Thus, on careful scrutiny of the documents on record it can be seen that in the revenue record, there was an entry in the name of the great-grandfather of the petitioner Rajaram and his caste was mentioned as '*Mana*.' The said entry is dated 01/04/1923. The said entry was neither denied nor disputed by the vigilance cell or the said Committee. The said document is an old document prior to the constitutional era and therefore, it has greater probative value than the subsequent document. Thus, it can be said that on the basis of said pre-constitutional document, the petitioner is entitled to the relief as claimed. Similarly, the other three documents on which the respondent No.1 Scrutiny Committee has relied upon those are of the year 1909, 1927, and 1928, wherein the caste of Sadashiv i.e. grandfather of the petitioner was shown as *Mani* instead of '*Mana*'. However, as per the observations of the Hon'ble Apex Court in the case of **Priya Gajbe** (supra), the same can be considered as a mistake or error while writing the caste of the grandfather of the petitioner. Likewise, as per the ratio laid down in the case of **Apoorva** (supra), the Committee ought not to have refused to grant the same status to the petitioner as she was in blood relation with him and as nothing has been brought on record to show that same was obtained by concealing the facts or fraud by the cousin brother and sister of the petitioner.

(21) Thus, it seems that respondent No.1 Committee has erred in rejecting the claim of the petitioner, and the findings recorded

by the Scrutiny Committee appear contrary to the documents on record, therefore, the same is liable to be quashed and set aside. As a result, we deem it appropriate to allow the present writ petition as follows: -

- 1) The impugned order dated 28/12/2022 passed by the respondent No.1 Scrutiny Committee is hereby quashed and set aside.
- 2) It is declared that the petitioner has proved that she belongs to the '*Mana*' caste Scheduled Tribe.
- 3) Within a period of four weeks from the receipt of the copy of this Order, the respondent No.1 Scrutiny Committee shall issue a validity certificate in favour of the petitioner.
- 4) No order as to costs.

The Rule is made absolute in the above terms. No Costs.

[ABHAY J. MANTRI, J.]

[A. S. CHANDURKAR, J.]

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