

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

WRIT PETITION NO. 5828 OF 2022

Chandrashekhar Chaudhari (aged about 27 years), Occupation :Farmer and 'Sarpanch, Gram Panchayat Mahalgaon (Kku) Ordinary resident of Village Chak Kawdapur, Po. Kosarsar Distt. Chandrapur 442907.	Petitioner
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-Vs.-

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| 1. The Scheduled Tribe Certificate
Scrutiny Committee, Gadchiroli-2
Through its Joint Commissioner
and Vice Chairman Gadchiroli
442605 | |
| 2 The Tahsildar and Returning
Officer, Warora, District
Chandrapur. | |
| 3 The District Collector,
Chandrapur District, Chandrapur. | Respondents |

Mr.N.D.Jambhule, counsel for the petitioner.
Mrs.K.S.Joshi, Additional Government Pleader for
respondent 1 to 3.

**CORAM: ROHIT B. DEO AND
MRS. VRUSHALI V. JOSHI, JJ.**

DATE : 18th APRIL, 2023

O R A L J U D G M E N T (Per : Vrushali V.Joshi, J.)

Heard.

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

3. The petitioner has invoked the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India to assail the order passed by the Committee on 17.05.2022 by which the Tribe Claim belonging to 'Mana' Scheduled Tribe has been invalidated.

4. The proposal of the petitioner for verification of his tribe claim 'Mana' Scheduled Tribe was forwarded by the respondent 2 Tahsildar Warora Dist. Chandrapur to the Scrutiny Committee Gadchiroli on 20.07.2021. The petitioner has obtained his caste certificate from Sub-Divisional Officer, Warora bearing MRC No-4064418511, dated 16.11.2019. The petitioner in support of the claim submitted his school leaving certificate along with other

documents including the validity certificates granted to his real uncles. There is no contra entry found to the vigilance cell. The Committee has discarded the revenue and school records of showing 'Mana' entries from 1952 to 2000 and by observing that the entry 'Mana' cannot be said to refer to Mana Scheduled Tribe. The claim was rejected on affinity test also.

5. The respondent 3 has filed reply stating that the Scrutiny Committee examined the claim of the petitioner in accordance with the guidelines by itself in its leading judgment in the case of **Ku.Madhuri Patil Vs. Additional Commissioner and others (AIR 1995 SC 94)** and in accordance with the Provisions of Maharashtra Act No.XXIII of 2001 and the Rules made thereunder.

6. The petitioner's tribe claim was referred to the Police Vigilance Cell as per Rule 12(2) to conduct home, school, revenue and other related inquiry. The Police Vigilance submitted its report to the Committee.

7. The Committee examined the documents enlisted at Sr. No.4,5,6,11,18. The documents are the copies of school records, tax assessment list, birth certificate of the petitioner, his father, grandfather and great grandfather, wherein caste entries are recorded as 'Mana'. The petitioner has produced his own documents of his relatives, wherein caste is stated as 'Mana'. However, from these documents, it cannot be concluded that these entries pertain to 'Mana' Scheduled Tribe. It is to be seen that in cases of synonymous entries of caste, old documentary entry of caste has no relevance as even in respect of synonymous caste, not being Scheduled Tribe, entry of caste is seen even prior to the Presidential Notification. Therefore, as per the settled principle of law laid down in the case of **Madhuri Patil [AIR 1995 SC 94]**, **Raviprakash Babulalsingh Parmar [AIR 2007 SC 295]** and Full Bench judgment **Shilpa Vishnu Thakur and ors. Vs.State of Maharashtra[2009 (3) Mh.L.J, 995]** the test of characteristics customs, ethnic, linkage, etc plays vital

role. Therefore, in such cases only the documentary evidence cannot be relied upon. Hence, without the test of socio-cultural affinity and ethnic linkage of the concerned, these documents do not help to prove the claim. The claimant must show and establish his affinity to the caste claim.

8. The documents enlisted at Sr.Nos. 7 and 8 are the copies of caste certificates in respect of the petitioner and his father. The caste certificates are always subject to scrutiny. Hence, they cannot be treated as conclusive proof while deciding one's tribe claim. The petitioner in support of his claim submitted the validity of his uncle, however, this validity is issued without conducting any Vigilance Cell enquiry, without applying the affinity test, by the then Committee only as per the Hon'ble Supreme Court's decision in C.A.No.5270/2004. The order passed by the respondent dated 17.05.2012 is just, proper and legal hence, deserves to be upheld by this Court. The

respondent 2 and 4 have also filed their reply on the same lines of reply filed by the respondent 1.

9. We have heard the learned counsel appearing for the respective parties.

10. We note that the petitioner *inter alia* relied on the birth certificate dated 17-12-1935 of his great-grandfather Maroti Mana which records the caste as “Mana”. The petitioner also relied on the validity certificate issued in favour of his uncles Prakash Chaudhari and Sanjay Chaudhari, which according to the committee are issued without conducting vigilance enquiry and are issued in view of the Hon’ble Supreme Court’s order in CA 5270/2004. The committee refers to certain documents which are noticed by the Vigilance Cell. Even according to the documents noticed by the Vigilance Cell the caste of the grandfather and father is mentioned as ‘Mana’. In so far as the birth certificate

dated 17-12-1935 submitted by the petitioner which pertains to his great-grandfather Maroti, the remark of the Vigilance Cell is that the Kotwal Panji could not be verified due to wear and tear of the record.

The Scrutiny Committee does accept that all documents between 1951-52 record the caste as “Mana”. However, further observation is that it cannot be said with certainty that the entries are of Mana Scheduled Tribe.

We further note that while observing in the operate part of the order impugned that the petitioner did not submit pre-constitutional documentary material, the Scrutiny Committee clearly failed to appreciate that the petitioner did submit birth certificate dated 17-12-1935 of Maroti Mana who is his great-grandfather. It is not even a finding recorded by the committee that Maroti Mana is not the great-grandfather of the

petitioner. The birth certificate appears to have been ignored on the assumption that the birth certificate is not available on record. Reference is made to the Vigilance Cell Report. All that the Vigilance Cell observed that the 1935 Kotwal Panji is in wear and tear condition and therefore, could not be inspected. It is difficult to appreciate the assumption of the committee that the birth certificate is not on record.

11. In so far as the affinity test is concerned, the relatively recent decision of the Hon'ble Supreme Court in the case of **Maharashtra Adiwasi Thakur Jamat Swarakshan Samit v. The State of Maharashtra and ors., 2023 (SCC) OnLine SC 326**, it is held that the affinity test is a litmus test.

12. We have not found any contra entry as would create any doubt as regards the claim of the petitioner to belong to the Mana Scheduled Tribe.

13. We are satisfied that the petitioner indeed belongs to Mana Scheduled Tribe and we, therefore, allow the petition in terms of prayer clauses (i) and (ii), which read thus :-

“(i) To direct the Respondent Scheduled Tribe Certificate Scrutiny Committee, Gadchiroli-2 to quash and set aside the impugned order dated 17.05.2022 (Annex.1) issued by the Respondent Scheduled Tribe Certificate Scrutiny Committee, Gadchiroli-2 (R-1) in the case no.सआ/आजप्रतसगड/V/79/34/2021 dated 17.05.2022 in case no.8/509/Elc/ 072021/184831.

(ii) To direct the Respondent Committee-the Scheduled Tribe Certificate Scrutiny Committee, Gadchiroli-2 to grant “Validity Certificate” to the petitioner (Chandrashekhar), within a week”.

14. Rule is made absolute in the afore-stated terms.

No order as to costs.

(MRS.VRUSHALI V. JOSHI, J)

(ROHIT B. DEO)