

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

Writ Petition No. 8403 of 2022

Harshu D/o Mahadeo Randai,
Aged about 19 yrs, Occ. Student,
R/o Mandavghorad,
Post - Mohgaon Zilpi, Tah. Hingna,
Distt. Nagpur – 441110.

.... **PETITIONER**

VERSUS

- 1) The Vice-Chairman/Member-
Secretary, Scheduled Tribe Caste
Certificate Scrutiny Committee,
Adiwasi Vikas Bhavan, Giripeth,
Nagpur.
- 2) The Principal,
Nagpur College of Pharmacy, Hingna.
- 3) The Registrar/Vice-Chancellor,
Rashtrasant Tukadoji Maharaj
Nagpur University, Nagpur.
- 4) The Commissioner,
State Common Entrance Test Cell,
Maharashtra State, Mumbai.

.... **RESPONDENTS**

Ms. Preeti Rane and Ms. Himani Kavi, Counsel for the petitioner
Mr. M.K. Pathan, AGP for respondent 1
Ms. Arati Singh, Counsel h/f. Mr. P.D. Meghe, Counsel for respondent 2
Mrs. S.S. Jachak, Counsel for respondent 3
Mr. N.S. Khubalkar, Counsel for respondent 4

**CORAM : ROHIT B. DEO AND
Y.G. KHOBRAGADE, JJ.**

DATED : 4th JANUARY, 2023

JUDGMENT (Per : Rohit B. Deo, J.)

Rule. Rule made returnable forthwith.

2. The challenge in the petition is to the order dated 25-10-2022 rendered by respondent 1 - Scheduled Tribe Caste Certificate Scrutiny Committee, Nagpur (Scrutiny Committee) whereby the claim of the petitioner of belonging to 'Mana', Scheduled Tribe which is entry 18 of the Scheduled Tribes Order, 1950, is rejected.

3. Brief facts are that the petitioner was issued caste certificate dated 22-2-2022 by the competent authority.

4. The petitioner, after passing the 12th Standard examination, appeared in the MH-CET Entrance examination, which she cleared and secured admission to respondent 2 - Nagpur College of Pharmacy, Hingna in the B-Pharm course. The verification proposal was forwarded to the Scrutiny Committee in regular course. The petitioner submitted the following documents along with the proposal for verification of the caste/tribe.

- Caste Certificate of the petitioner dated 22-2-2022
- School Leaving certificate of the petitioner of 10th Std dated 31-3-2020
- Caste Certificate of the petitioner's father dated 1-3-2022

- School Leaving Certificate of the petitioner's father of 10th Std. dated 29-1-1990
- Extract of birth of daughter born to great grandfather of petitioner, namely, Maroti (1945)
- Extract of birth of daughter born to cousin great grandfather of petitioner, namely, Bajirao (1944)
- Extract of Bandobast Khasra (1911-12)
- Extract of 7/12 of petitioner's family
- Validity Certificate of petitioner's uncle, namely, Ishwar dated 9-2-2007
- Validity Certificate of petitioner's uncle, namely, Krushna dated 14-3-2006 along with police vigilance report dated 17-12-2005
- Validity Certificate of petitioner's cousin uncle, namely, Sheshrao dated 8-12-2008
- Validity Certificate of petitioner's cousin brother, namely, Vedant dated 15-10-2018
- Validity Certificate of petitioner's cousin brother, namely, Krudant dated 15-10-2018
- Family tree of petitioner's family dated 1-3-2022.

The petitioner also submitted the extract of birth and death certificate evidencing that female child was born to her great grandfather Maroti, that a female child was born to her cousin great grandfather Bajirao, the Validity Certificate secured by her uncle Ishwar, Validity Certificate of her uncle Krushna along with police vigilance report, Validity Certificate of her cousin uncle Sheshrao and cousin brothers Vedant and

Krudant and sought to demonstrate her relationship with the help of genealogical/family tree.

5. The Scrutiny Committee directed an enquiry and the vigilance report dated 1-6-2022 was received, an explanation was sought from the petitioner which was offered vide reply dated 15-6-2022.

6. The Scrutiny Committee was pleased to invalidate the caste claim of the petitioner, *inter alia* on the finding that the documentary evidence does not support the claim and that the test of affinity is not satisfied. The aspect of area restriction is looked into.

7. The submission canvassed by Ms. Himani Kavi, who addressed us with some assistance from Ms. Preeti Rane, is that the Scrutiny Committee committed grave error in not relying on the validation of the certificates issued to her paternal relatives. It is further submitted that the documents which are procured by the vigilance cell, and which purportedly contained adverse entries of Mani, Mani-Ku and Mana-Ku are mostly of the post constitutional era. The entry of Mani in the year 1940 is wrongly recorded and is not supported by any material. The other entries which are considered as adverse entries pertain to the post constitutional era. Ms. Kavi would emphasize that the pre-constitutional era entries of the year 1911-12,

1944 and 1945 which record caste as Mana are ignored. It is emphasized that the oldest document submitted by the petitioner is the extract of Bandobast Khasra of the year 1911-12 pertaining to the land of her great grandfather which document is also procured by the vigilance cell, and the said document supports the claim of the petitioner. It is further submitted that the extract of Kotwal Book of 1950 pertaining to her paternal grandmother Tani and the Kotwal Book of the year 1945 also refer to the caste as Mana. It is further argued that the Scrutiny Committee committed grave error in doubting the credibility of the document of 1944 which was also considered by the vigilance cell and the scrutiny committee which validated the caste of Krushna, who is paternal uncle of the petitioner. Ms. Kavi would further submit that the observation of the Scrutiny Committee that the relationship of Rajaram is not proved by the petitioner is incorrect. Several decisions are brought to our notice in support of the submission that the claim of the petitioner of belonging to Mana, Scheduled Tribe ought to have been validated. With the assistance of the learned counsel Ms. Kavi and the learned counsel for the respondents, we have scrutinized the reasons recorded by the Scrutiny Committee.

8. We find substance in the submission that the Scrutiny Committee has sat in appeal over the decision of the earlier scrutiny

committee which validated the claim of the paternal uncle of the petitioner Krushna and the other paternal relatives. We are not even for a moment suggesting that the Scrutiny Committee is powerless to reopen earlier enquiry and adjudication. However, the earlier enquiry and adjudication can be reopened only under certain circumstances akin to fraud or fabrication of documents being the basis of acquiring the earlier validity or if the earlier adjudication suffers from a manifest error such as failure to secure the vigilance report when a vigilance enquiry was necessary in the factual matrix. What we notice is that the Scrutiny Committee observes that the earlier scrutiny committee which validated the certificates of Krushna, Ishwar, Sheshrao and Vedant did not conduct the verification in accordance with the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance & Verification of) Caste Certificates Act, 2001 and the Rules framed thereunder. On scrutinizing the material on record, we cannot but disagree with the sweeping observation. While the view taken by the scrutiny committee which validated the caste of illustratively Krushna, after securing vigilance cell report, may not appeal to the present Scrutiny Committee, ordinarily adjudication must not be reopened unless the earlier view is vitiated by

an extremely grave error or by fraud or misrepresentation or reasons akin.

9. The Scrutiny Committee has blamed the petitioner for suppressing the documents secured by the vigilance cell in which the caste is recorded as Mani or Mani-Ku. We however, note that the adverse entries are of the post constitutional era. In so far as the entries of the pre-constitutional era, the copies of the birth extracts are ignored on the ground that the genuineness thereof is not proved by the original birth entry records maintained at the record room of the collector. However, the vigilance report is that the record keeper informed that the original record is not available since the same is either destroyed or torn. It is further reflected in the vigilance report that the uncle of the petitioner Krushna Vasudeo Randai did receive the copy of birth record on 15-6-2005. During the course of hearing, learned counsel Ms. Kavi made available for our perusal the certified copy which was obtained by her paternal uncle Krushna Randai on 15-6-2005. On perusal of the certified copy, we have no hesitation in holding that there is nothing doubtful or suspicious about the photocopies of the birth record submitted by the petitioner.

10. We further note that there is no dispute as regards the entry of the blood relatives of the petitioner recorded in the year

1911-12 and thereafter in the post constitution era, which is of Mana. The Scrutiny Committee observes that it would not be possible to ignore the entries of Mani and Mani-Ku which are recorded in the post constitution era and to issue validity certificates on the basis of the documents of the year 1911-12. We note that the oldest document of 1911-12 refers to the caste as Mana in the Bandobast Khasra. The vigilance cell report is that the Bandobast Khasra is verified and certified copy annexed with the report. The Scrutiny Committee has *inter alia* observed that even that the fact that the land is sold in favour of Sahkar Finance and Investment Company on 15-3-2005 shows that the land holders are not belonging to Scheduled Tribes in as much as the land is sold without permission of the collector. We are afraid, that no such inference could have been drawn by the Scrutiny Committee. The Bandobast Khasra of 1911-12 is duly verified and the caste reflected is Mana. The said pre-constitutional document cannot be ignored by taking recourse to inferential and speculative logic.

11. We have satisfied that the order impugned of invalidation of the caste claim of the petitioner deserves to be set aside. We order accordingly.

12. The order dated 25-10-2022 rendered by respondent 1-Caste Scrutiny Committee is quashed and set aside.

13. It is held that the petitioner belongs to Mana Scheduled Tribe.

14. Respondent 1-Caste Scrutiny Committee shall issue the formal validity certificate to the petitioner as expeditiously as possible.

15. Since the last date of production of the validity certificate is 05-1-2023, we direct that if the formal certificate is not received, respondent 4-The Commissioner, State Common Entrance Test Cell, Maharashtra State, Mumbai shall act on this operative part of the judgment and shall treat the petitioner as belonging to the Mana Scheduled Tribe.

(Y. G. Khobragade, J.)

(Rohit B. Deo, J.)

wasnik/adgokar