



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

Writ Petition No.5238/2022

Ku. Rutuja d/o Banduji Gajbe,
Aged about 18 years, Occ.-Student,
R/o.-Ward No.2, Vishwa Colony, Pimpalgaon Road,
Yavatmal, Tah. and Distt.Yavatmal. Petitioner.

Versus

1. Deputy Director and Member-Secretary,
The Scheduled Tribe Caste Certificate Scrutiny Committee,
Amravati, Opposite of office of State Information Commission,
Chaprashipura, Amravati.
2. Directorate of Medical Education and Research, (Amended as per Courts order
Mumbai (DMER-Mumbai), Excelsior Building, dated 25-10-2022)
AK Nayak Marg, Azad Maidan, Fort,
Mumbai-400001 (M.S.)
3. The Dean, (R.3 and 4 amended as per
Shri Vasantnao Naik Govt. Medical College, Courts order dated 01-11-2022)
Yavatmal, Waghapur Road, Palaswadi Camp,
Civil Lines, Yavatmal (Maharashtra) 445001.
4. Vice Chancellor, Maharashtra University of Health Sciences,
Nashik, Masrul-Vani Dindori Road, Nashik
(Maharashtra) 422004. Respondents.

Mr. Ananta Ramteke, Advocate for the petitioner.
Mr. Abhijit Deshpande, Advocate for respondent no.4.
Mr. S.M. Ukey, Addl.GP for the respondent nos.1 to 3.

CORAM : Nitin W. Sambre & Abhay J. Mantri, JJ

DATE : 06-03-2024.

J u d g m e n t (Per Abhay J Mantri, J.)

Rule. Rule is made returnable forthwith and heard
finally with the consent of learned Counsel for the parties.

2. The petitioner is assailing the order dated 31-01-2022, passed by respondent no.-1 Deputy Director and Member-Secretary, the Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati (for short-'*the Scrutiny Committee*'), thereby the Scrutiny Committee has negated the claim of the petitioner that she belongs to '*Mana*' Scheduled Tribe category.

3. It is a case of the petitioner that she belongs to the '*Mana*' Scheduled Tribe category which is listed at Entry No.18 in the Constitution (Scheduled Tribes) Order, 1950. On 18-12-2017, the Sub-Divisional Officer, Yavatmal, issued a certificate in favour of the petitioner that she belongs to the '*Mana*' Scheduled Tribe. She appeared for the entrance examination i.e. NEET conducted for admission in medical courses from the '*Mana*' Scheduled Tribe category, for that purpose, the validity certificate is mandatory. Therefore, on 12-08-2020, the petitioner through the Principal of the college forwarded her tribe claim along with the documents to the Scrutiny Committee.

4. The Scrutiny committee being dissatisfied with the said documents referred the case of the petitioner to the Vigilance Cell for detailed enquiry. Accordingly, the Vigilance Cell conducted an enquiry and submitted its report on 06-08-2018 to the Scrutiny Committee.

5. The Scrutiny Committee after considering the Vigilance Cell found some contra entries in the Vigilance Cell

report regarding the documents submitted by the petitioner. Accordingly, by way of the impugned order, respondent no.1 invalidated the claim of the petitioner that she belongs to the '*Mana*' Scheduled Tribe. Hence, the petitioner has preferred this petition.

6. The learned Counsel for the petitioner vehemently submitted, that the petitioner in support of her claim has submitted a document dated 10-03-1924 pertaining to her great grandfather, wherein his caste was mentioned as '*Mana*'. The said document is the oldest one and therefore the said document is of greater probative value. But the Scrutiny Committee has not considered the said document and given undue importance to the documents of the years 1926 and 1935, wherein the caste of his grandfather was mentioned as '*Mani*' and '*Mana Kunbi*'.

7. To buttress his submission, learned Counsel for the petitioner has relied on the following authorities:-

- (a) Shubham s/o Mahadeo Gudade vs Vice-President & Member-Secretary, the Scheduled Tribe Caste Certificate Scrutiny Committee, Yavatmal and others (W. P. No.7005/2022, decided on 02-01-2024).
- (b) Vilas s/o Pandurang Chaudhari vs the Vice-Chairman, Scheduled Tribe Caste Certificate Scrutiny Committee, Gadchiroli and another (Writ Petition No.2962/2018, decided on 18-01-2024).

- (c) Vijay s/o Pundlik Raikar vs State of Maharashtra and others (Writ Petition No.4880/2023, decided on 02-01-2024).
- (d) Aditi Ganesh Koli and another vs Schedule Tribe Certificate Scrutiny Committee and others, 2002(7) ALL MR 707.
- (e) Ku. Samiksha Vilas Dharne vs the Schedule Tribe Certificate Scrutiny Committee, Nagpur (Writ Petition No.1192/2022, decided on 09-01-2024).
- (f) Anil Ramdas Mede vs State of Maharashtra and others, 2004(4) ALL MR 639.
- (g) Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti vs State of Maharashtra and others, 2023(2) Mh. L.J. 785.
- (h) Mana Adim Jamat Mandal vs State of Maharashtra and others, 2003(3) Mh.L.J. 513.
- (i) Priya Pramod Gajbe vs State of Maharashtra and others 2023 SCC OnLine SC 909.
- (j) Anand vs Committee for Scrutiny and Verification of Tribe Claims and others, 2011(6) Mh.L.J. 919.

8. *Per contra*, learned Additional Government Pleader, strongly resisted the application on the ground that the extract of the Birth Register of the great grandfather of the petitioner for the year 1925-1926 denotes that her great grandfather belongs to the '*Mani*' caste and document for the year 1935 shows that the paternal aunt of the petitioner belongs to 'Mana Kunbi' caste. The said entries relate to the pre-Constitutional era having great probative value and importance, therefore passing of invalidation order by the Scrutiny Committee is just, legal, and proper. To buttress his submission, he has relied on the following authorities

and submitted that no interference is required in the impugned order.

- (a) Maroti s/o Vyankati Gaikwad and others vs Deputy Director and Member-Secretary, the Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati and others (Writ Petition No.12/2022, decided on 15-09-2023).
- (b) State of Maharashtra vs Milind and others, (2001) 1 SCC 4.

9. We have dealt with the rival submissions of both parties and gone through the record and the impugned order. It is found that the petitioner in support of her claim has produced the extract of the Birth Register dated 10-03-2024 of her great-grandfather. The said document denotes that one female child was born to the great-grandfather of the petitioner (Doma). It is pertinent to note that neither the Vigilance Cell nor the Scrutiny Committee have disputed the genuineness of the said document or the relationship of the petitioner with Doma. The said document is the oldest one and prior to the other documents of the years 1925, 1926 to 1935. Therefore, in view of the dictum laid down in the case of Priya Gajbe (supra), the earliest entry/oldest entry should be given more credence than the other entries. In the case in hand, admittedly, the entry dated 10-03-1924 is the oldest one than the years 21-05-1925, 14-04-1926 and 04-01-1935. The entries dated 10-03-1924, 21-05-1925, and 14-04-1926 pertain to the great-grandfather of the petitioner. However, in the entry dated 10-03-1924, the caste

of the great-grandfather of the petitioner was shown as '*Mana*' and the subsequent entries were shown as caste '*Mani*'. In such circumstances, the case of the petitioner is covered by the law laid down in the case of Priya Gajbe (supra), as it was an admitted position that there is no caste recognized in the name of '*Mani*' and therefore as held in the case of Priya Gajbe (supra) that there is a possibility of some mistake in writing when the caste was written in Marathi. The facts in the case at hand are similar to the facts in the case of Priya Gajbe (supra). Therefore, the judgment in the case of Priya Gajbe (supra), is squarely applicable to the case at hand. In such an eventuality, the entries dated 21-05-1925 and 14-04-1926 do not help to discard the claim of the petitioner that she belongs to the '*Mana*' Scheduled Tribe.

10. Secondly, the petitioner while filing a reply/explanation to the show cause notice has categorically denied the entries in the document of the year 1925-26 and stated that she is not agreeing with the said entries. So also in respect of entries in the document of the year 1935, she has stated that due to a mistake, the caste of her grandfather and paternal aunt may be mentioned in the document as 'Mana Kunbi' instead of caste '*Mana*', as in the document of the year 1924 the caste of her great-grandfather was mentioned as '*Mana*'. So, the question of mentioning the caste of a paternal aunt of the petitioner as 'Mana Kunbi' does not arise. Thereby, she disagrees with all those entries

like '*Mani*' and 'Mana Kunbi', as the same are not recognized as caste.

11. Another ground raised by the Scrutiny Committee is, that the petitioner failed to prove affinity test. However, as per the judgment in the case of Anand (supra) as well as Priya Gajbe (supra), the Hon'ble Apex Court held that the '*affinity test cannot be applied as a litmus test*' and therefore on this ground it would not be proper to reject the claim of the parties.

12. Having considered the aforesaid discussion it emerges, that the petitioner has produced the oldest document dated 10-03-1924 before the Scrutiny Committee. The genuineness of the said document is not disputed by the Scrutiny Committee or the Vigilance Cell. Therefore, being the oldest document the same has a greater probative value than the other documents on record. Secondly, entries in respect of documents dated 21-05-1925 and 14-04-1926 pertain to the great-grandfather of the petitioner, in which his caste was shown as '*Mani*' and as per the judgment of the Priya Gajbe (supra), same has to be read as '*Mana*' as the said entry was mistakenly taken in the record as '*Mani*'. The birth entry of the year 1935 as 'Mana Kunbi' i.e. the subsequent entry which is disputed by the petitioner during her explanation to the show cause notice. That being so, in our considered opinion, the oldest entry of the year 10-03-1924 has a greater probative value than

the other documents, therefore, the same has to be taken into consideration while deciding the claim of the petitioner.

13. We have gone through the Authorities cited by both parties. However, in view of the aforesaid discussion, we are of the opinion that the case in hand is covered by the dictum laid down in the case of Priya Gajbe (*supra*) and Anand (*supra*).

14. *Per contra*, the dictum laid down in the Authorities relied upon by the learned Additional Government Pleader, is not helpful for him in support of his argument.

15. Thus, it seems that the findings given by the Scrutiny Committee are contrary to the dictum laid down in above referred Authorities and facts on record. Therefore, based on the above-mentioned findings, the order cannot be sustained in the eyes of the law and the same is liable to be set aside.

16. In the light of above discussion, we proceed to pass the following order :-

- (a) The impugned order dated 31-01-2022 passed by respondent no.1 Scrutiny Committee is hereby quashed and set aside.
- (b) It is declared that the petitioner has proved that she belongs to the '*Mana*' Scheduled Tribe.

- (c) Within a period of four weeks from the receipt of a copy of this judgment respondent no.1 - the scrutiny committee shall issue a Caste Validity Certificate in favour of the petitioner.
- (d) As a sequel of above, the respondent nos. 2 to 4 shall extend all the benefits to the petitioner to which she is entitled to in pursuance of the validity.

17. Rule is made absolute in the above terms with no order as to costs.

(Abhay J. Mantri, J.)

(Nitin W. Sambre, J)