



Judgment

wp2074.23

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

WRIT PETITION No. 2074 OF 2023.

Ritik d/o Vilas Sawasakade,
Aged about 21 years, Occupation
Student, resident of at Arvi,
Post Girad, Taluq Samudrapur,
District Wardha.

... **PETITIONER.**

VERSUS

1.The State of Maharashtra,
through its Secretary, Tribal
Development Department,
Mantralaya, Mumbai – 32.

2.Scheduled Tribe Certificate Scrutiny
Committee, Nagpur, through its
Member-Secretary, O/o. Adiwasi Vikas
Bhawan, Amravati Road, Giripeth,
Nagpur 440010.

... **RESPONDENTS.**

Mr. S.D. Borkute, Advocate for the Petitioner.
Ms T.H. Khan, A.G.P. for Respondents.

CORAM : VINAY JOSHI AND
M.S. JAWALKAR, JJ.

DATE : JUNE 27, 2024.

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ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard. Rule. Rule is made returnable forthwith and with consent of the learned Counsel present for the parties, the matter is taken up for final disposal.

2. The petitioner is assailing the order dated 31.10.2022 passed by respondent no.2 Scheduled Tribe Certificate Scrutiny Committee, Nagpur thereby rejecting the caste claim of the petitioner as belonging to 'Mana Scheduled Tribe'.

3. It is the case of petitioner that she belongs to Mana Scheduled Tribe category which is listed at Entry No.18 in the Constitution (Scheduled Tribe) Order, 1950. On 22.11.2021, the Sub Divisional Officer, Hinganghat has issued caste certificate in favour of the petitioner as belonging to 'Mana' Scheduled Tribe. The petitioner's caste claim was forwarded for scrutiny and verification through the Principal, Vidya Vikas Arts, Commerce and Science College. The petitioner has tendered various pre-

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constitutional documents in support of her caste claim. The Scrutiny Committee after considering the vigilance cell report, has discarded the documents, and thereby rejected the caste claim of the petitioner.

4. The learned Counsel appearing for the petitioner would submit that in support of her caste claim, the petitioner has submitted two pre-constitutional documents of the year 1909 and 1949. These documents pertain to petitioner's great-great-grand father – Raghu and great grand father Dhondu. Though the oldest documents which are having greater probative value have been produced, the Committee declined to consider the same.

5. Perusal of the impugned order discloses that the petitioner has produced land record of Raghu son of Nilu of the year 1909, showing Mana caste, however, it was declined by the Committee for the reason that the petitioner has failed to establish the relationship. We have been taken through the said extract of Raghu s/o Nilu of the year 1909. The learned Counsel for the

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petitioner has produced old revenue extracts [page no.46 of the petition], showing name of Raghu's son as Sadashiv and place of residence at Khadakpur. It reveals from the genealogy contained in the impugned order, that name of Raghu's son is Sadu @ Sadashiv, thus, it is evident that the land record of the year 1909 pertaining to Raghu is in respect of forefather of the petitioner.

6. The petitioner further relief on the birth entry extract showing that petitioner's great grand father Dhondur has a son namely Tulshiram. The said document of the year 1949 has been sidelined by the Committee by stating that the school leaving certificate of Tulshiram discloses his date of birth as 07.03.1954, and therefore, the genuineness of the birth extract of Tulshiram showing his date of birth as 18.08.1949 is doubtful. Pertinent to note that the genuineness of the birth extract has not been doubted, but, there was subsequent birth entry in the school record showing another date of birth, therefore said document is discarded. By any means, the birth extract would prevail over the school leaving certificate in absence of allegation of fabrication.

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7. The Committee has found some 'Mani' entries and therefore, it was also one of the ground for rejection. In this regard the learned Counsel for the petitioner has relied on the decision of Supreme Court in case of **Priya Pramod Gajbe .vrs. State of Maharashtra and others – 2023 SCC Online SC 909**, to contend that the word 'Mani' may be an error as there is no such caste as Mani. The relevant observation made in paragraph no.10 of the aforesaid decision reads as under :

“10. A perusal of the report of the Vigilance Committee itself would reveal that the applicant's great grandfathers birth record show the caste as 'Mana'. The said document relates to an early as 10th March 1924, while another document of 14th April 1926 shows as 'Mani'. However, it is pertinent to note, the learned counsel for the parties also agree, 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 original record is written in Marathi and not in English. As such, such an error is quite possible.”

8. In the decision of Supreme Court in case of **Anand .vrs.**

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Committee for Scrutiny and Verification of Tribe Claims and others – [2012] 1 SCC 113, it has been observed that the documents which are of pre-independence era are having greater probative value. Though the petitioner has produced pre-independence documents, however, for perfunctory reasons they have been discarded. Another reason given by the Committee is that the petitioner failed to prove affinity test, however, as per the decision of the Supreme Court in case of Anand [supra] as well as Priya [supra], the affinity cannot be applied as litmus test, and therefore, on this ground it would not be appropriate to reject the tribe claim of the petitioner.

9. It is evident that pre-independence documents which are having high probative value are not considered by the Committee in its proper perspective. On the basis of mere conjectures, those documents have been discarded which ought not to have been done. Besides that the petitioner has produced several documents to show entries of Mana recorded at various place. In the circumstances, we are of the view that the Committee has erred in not granting validity in favour of the petitioner. This being so, we deem it appropriate to

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allow the present petition.

We hereby quash and set aside the impugned order dated 31.10.2022 passed by respondent no.2 Scrutiny Committee. We direct the respondent no.2 Scrutiny Committee to issue validity certificate in favour of the petitioner as belonging to 'Mana Scheduled Tribe', within a period of four weeks from today.

In the meantime, the competent / concerned Authority to act upon the copy of this judgment.

10. Rule is made absolute in aforesaid terms with no order as to costs.

JUDGE

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