



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.
WRIT PETITION NO. 1212 of 2019

Nikhil s/o Sanjay Bodewar

..Petitioner

vs.

State of Maharashtra through its Secretary, Ministry
of Social Justice and Tribal Welfare Department, Mumbai ..

... Respondent.

Ms N.C. Phadnis, Advocate for petitioner.

Mr Hrishikesh Marathe, Assistant Government Pleader for respondent no. 1 and 2.

Ms Ayushi Dangre, Advocate for respondent no.3.
-----**CORAM :- NITIN W. SAMBRE AND MRS. VRUSHALI V. JOSHI, JJ.****DATE :- 11thMARCH, 2025**

P. C.

Heard.

2. The petitioner has questioned the order dated December 15, 2018 whereby the claim of the petitioner for issuance of validity of belonging to 'Mannewar' Scheduled Tribe came to be rejected.

3. The petitioner got admission in Scheduled Tribe category in the respondent no.3-College which has prompted him to submit the claim for issuance of validity. In support of his claim for validity, he has submitted in all fifteen documents including that of caste certificate issued on June 15, 2015 by the Sub-Divisional Officer, Aheri. Since the Committee was not satisfied with the claim of the petitioner, it referred the matter to the Vigilance Cell for field enquiry. The Vigilance Cell has conducted the enquiry in the matter and submitted its report on August 05, 2014. The said report speaks of the caste entry in relation to the grandfather of the petitioner Lachanna Balam of June 01, 1957 to be of 'Mannepawar' caste. Such adverse entry and failure of the petitioner to clear the affinity has prompted the respondent Committee to pass the impugned order.

4. Mr. Phadnis, learned counsel appearing for the petitioner, would invite attention of this Court to the entries of 'Mannewar' caste recorded in the record of his father-Sanjay and grand father-Lachanna Balam so as to claim that since 1985 onwards, there are consistent entries of 'Mannewar' in the record of the blood relations of the petitioner.

According to Mr. Phadnis, the Scheduled Tribe Order came to be modified and the caste 'Mannewar' is included as Scheduled Tribe. According to him, the said modification is of 1956. He further submits that there is no caste by name 'Mannepawar' which formed to be the basis for rejection of the claim of the petitioner as that of belonging to 'Mannewar' Scheduled Tribe.

He would further claim that the Apex Court in the matter of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti vs. State of Maharashtra and others* reported in **2023 (2) Mh. L. J. 785** has already ruled that the affinity test cannot be termed as a litmus test so as to decide the claim for issuance of validity.

5. As against above, it is claimed by Mr. Marathe, learned Assistant Government Pleader appearing for the respondent Committee, that the oldest entry in relation to Lachanna - grandfather of the petitioner speaks of the caste 'Mannepawar'. The Committee has rightly held that 'Mannepawar' entry is an adverse entry and it cannot be considered to the benefit of the petitioner. The learned Assistant Government Pleader would further urge that the petitioner has failed to produce caste entry of belonging to 'Mannewar' prior to August 20, 1956 i.e. the date on which, by way of an amendment, 'Mannewar' tribe was notified as Scheduled Tribe. As such, he

has sought dismissal of the petition.

6. We have considered the rival claims.

7. As regards the available evidence in the form of documents if appreciated, two reasons are recorded by the Committee viz. 'Mannepawar' entry recorded in the school record of the grandfather - Lachanna and absence of entry of the tribal land in the revenue record of land owned by the mother of the petitioner – Ushatai.

As regards adverse entry of 'Mannepawar' is concerned, when confronted with the learned Assistant Government Pleader as to existence of 'Mannepawar' caste, on instructions, he has fairly conceded that there is no caste as 'Mannepawar' in any of the statute dealing with the caste.

8. As such, there are consistent entries of 'Mannewar' not only in relation to the grandfather of the petitioner but also in relation to the father of the petitioner. As such, the reasons cited by the Committee for rejection of the claim of the petitioner thereby recording a finding that the caste entry in the record of the grandfather of the petitioner is 'Mannepawar' would lead to negation of the claim cannot be sustained.

9. The Vigilance Cell pursuant to the directions of the Committee has conducted an enquiry. But for single entry of 'Mannepawar', there is no adverse material available on record so as to infer that the petitioner is not belonging to 'Mannewar' Scheduled Tribe or it is not brought on record by the Vigilance Cell that the petitioner or his blood relations belong to any other caste.

10. We are equally required to be sensitive of the fact that the parties like the petitioner inherits his caste from his father. No doubt, even if the document in relation to his mother is taken into account, in absence of entry of Scheduled Tribe in the revenue record the land can be transferred to non-tribal, cannot be accepted **as** a basis for negating the claim of the petitioner, particularly when such document is in relation to the mother of the petitioner. The negative finding recorded by the Committee, in our opinion, has no basis in law to infer that the petitioner cannot be said to be belonging to Scheduled Tribe category when relevant rules contemplate that 'blood relation' has to be construed as relation from father's side.

11. Apart from above, we are equally assisted by authoritative pronouncement in the matter of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti* (supra) that the applicability of the affinity test cannot be termed as a litmus test. It is not that the petitioner has not attempted to satisfy the affinity test, however the Committee was not satisfied with the information supplied by the petitioner.

12. Once the documents speak of the petitioner belonging to 'Mannewar' caste, merely based on the affinity test, the claim of the petitioner cannot be negated.

13. That being so, we deem it appropriate to quash and set aside the impugned order dated December 15, 2018 passed by the respondent-Committee.

We declare that the petitioner belongs to 'Mannewar' Scheduled Tribe.

We direct the respondent Committee to issue caste validity certificate in favour of the petitioner within a period of four weeks from the date of production of copy of this order.

14. The writ petition stands allowed in above terms. No costs.

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)

Andurkar.