



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

WRIT PETITION NO.7000 OF 2017

Gitesh s/o Narendra Ghormare,
Aged about 19 years,
Occupation – Student of first year
MBBS, G.M.C., Nagpur,
Original Resident of District Gondia,
Near Yashoda Sabhagruh,
Shastri Ward, Gondia – 441 601.

... Petitioner

Versus

- 1. The Scheduled Tribe Certificate
Scrutiny Committee, Nagpur,**
through its Member-Secretary,
Adiwasi Vikas Bhawan,
Giripeth, Nagpur.
- 2. The Director of Medical Education
and Research (DMER),
Maharashtra State,**
through its Director,
Government Dental College and
Hospital Building,
Saint George Hospital,
V.T. Mumbai 400 001.
- 3. State of Maharashtra,**
through the Additional Chief
Secretary,
Medical Education and Drugs
Department,

9th Floor, G.T. Hospital Campus,
Lokmanya Tilak Road,
New Mantralaya,
Mumbai.

4. **Government Medical College, Nagpur,**
through its Dean, Manuman Nagar,
Nagpur.

5. **The Maharashtra University of Health
Sciences,**
through its Registrar,
Vani-Dindori Road,
Mhasrul, Nashik 422 003.

... **Respondents**

Shri R.S. Parsodkar, Advocate for Petitioner.
Assistant Government Pleader for Respondent Nos.1 to 4.
Shri Kiran Malokar, Advocate for Respondent No.5.

CORAM : R.K. DESHPANDE & ARUN D. UPADHYE, JJ.

DATE OF RESERVING THE JUDGMENT : 28th JUNE, 2018

DATE OF PRONOUNCING THE JUDGMENT : 2nd JULY, 2018

JUDGMENT (PER R.K. DESHPANDE, J.) :

1. Rule, made returnable forthwith. Heard finally with the
consent of the learned counsels appearing for the parties.

2. The claim of the petitioner for 'Mana Scheduled Tribe' at Entry at Serial No.18 in the Constitution (Scheduled Tribes) Order, 1950 has been invalidated by Scheduled Tribe Certificate Scrutiny Committee, Nagpur, by an order dated 25-10-2017, which is the subject-matter of challenge in this petition. The validity was sought by the petitioner for the purposes of admission to First Year MBBS Course. The petitioner, after qualifying NEET Examination on 4-6-2018, is waiting for the rounds of admission to the MBBS Course.

3. The petitioner produced several documents, which are the part of School records of his forefathers/blood relatives the petitioner indicating their caste as 'Mana' during the years 1914 to 1943. The relationship of the petitioner with all these persons, viz. Keshav, Ishwar, Dahpat, Dolan, Yesuram, Jaijairam and Hiralal, is not at all disputed. The revenue records in the name of some of these persons pertaining to the years 1918-19 to 1953-55 and the birth extracts/certificates in respect of the children born to all these blood relatives recording the entry Caste 'Mana' during the years 1916, 1922 and 1927 are also not disputed.

4. The Scheduled Tribe Certificate Scrutiny Committee, Nagpur (“the Committee”) records the finding that the documents indicate the entries like 'Mane Ku', 'Mana Ku', 'Ku Mana', 'Mana Kunbi', 'Patil Mana', 'Mane', 'Mani', 'Kunbi', etc., which is a sub-caste or class of 'Kunbi', a non-tribal community. The documents do not speak of social status as tribe or caste when two different social status synonymous groups exist in Society, out of which one is tribe and other is caste of other social status. The Committee holds that the socio-cultural affinity test, therefore, plays a vital role.

5. The Committee holds that the Vigilance Cell has obtained adverse record and it, therefore, vide letters dated 13-9-2017, called the explanation of validity holders Ku. Gayatri Tekram Ghormare, Ku. Ujwala Bhaurao Ghormare, Shri Aniruddha Baburao Ghormare, Shri Shobhit Ashok Ghormare, Shri Ashish Ashok Ghormare, Ku. Vithabai Dahpat Ghormare (Sau. Nandatai Sheshrao Randiwe) and Shri Durwas Martand Ghormare, to whom the

Committee issued the Conditional Validity Certificates and, therefore, such certificates cannot be the basis for the petitioner to substantiate his claim. The Committee further holds that the Vigilance Cell enquiry was not conducted in respect of these validity certificates and without reasoned order and testing the affinity, the validity certificates were issued as per the directions of the Supreme Court as well as the High Court.

6. The Committee relies upon the Circular/Notification issued by the State of Maharashtra, Education and Sports Department indicating that 'Mana' caste is classified under Other Backward Class category at Serial No.268 and later the said caste was classified under Special Backward Class category at Serial No.2 in the list published by the Social Justice Department. The Committee holds that the Government Resolutions dated 24-4-1985 and 12-9-1986 prescribe the guidelines to check the synonymous non-tribal caste to restrict the obtaining of caste or tribe certificates by pseudo tribals.

7. The Committee relies upon the statements of the petitioner's father and paternal cousin grandfather Shri Ishwardas Kashiram Ghormare recorded on 19-8-2017 and 22-8-2017 giving the traits, characteristics and customs of the community to which they belong and further records the finding on comparison with the guidelines contained in the Government Resolutions dated 24-4-1985 and 12-9-1986 that the same do not match with the ordinary place of residence and socio-cultural affinity with 'Mana', Scheduled Tribe.

8. The Committee relies upon the population census of 1971 and 1981 of the Scheduled Tribes in the State of Maharashtra and holds that the group of Scheduled Tribes listed at Serial No.18 in the Scheduled Tribes List, i.e. 'Gond', 'Rajgond', 'Arakh', etc., which includes 'Mana', Scheduled Tribe also rose from 3,31,798 in the year 1971 to 11,62,735 in the year 1981. This enormous increase in the population is unexplainable.

We now proceed to deal with the findings of the Committee on merits :

9. Para 5 of the order of the Scrutiny Committee shows that the petitioner has produced about 109 documents on record in support of his claim for 'Mana Scheduled Tribe'. The documents include the school, birth and revenue records of the pre and post-constitutional period. Most of these documents were forwarded by the Committee to the Police Vigilance Cell for verification as to their genuineness and correctness. The Police Vigilance Cell conducted the home enquiry and submitted two reports dated 26-8-2017 and 7-10-2017, giving its opinion that the documents obtained and the social status of the petitioner do not match with 'Mana Scheduled Tribe'. The Committee considers all these documents and records the finding that the petitioner has failed to establish his claim for 'Mana Scheduled Tribe' either on the basis of the documents or on the basis of the affinity test.

10. After going through both the Police Vigilance Cell reports and the findings recorded by the Committee in respect of documentary evidence, we find the following undisputed position

in respect of the prominent school/college records, birth extracts and revenue extracts of the blood relatives of the petitioner, which we narrate as under :

(a) In the school/college records of -

(i) Dahpat Dolan, the cousin great grandfather of the petitioner, the caste 'Mana' was entered in the year 1914.

(ii) Yesuram Dudeswar, the cousin uncle of the petitioner, the caste 'Mana' was entered in the year 1914.

(iii) Jaijairam Dudeswar, the cousin uncle of the petitioner, the caste 'Mana' was entered in the year 1922.

(iv) Hiralal Kashiram, the cousin grandfather of the petitioner, the caste 'Mana' was entered in the year 1934.

(v) Keshav Kashiram, the paternal grandfather of the petitioner, the caste 'Mana' was entered in the years 1937 and 1941.

(vi) Ishwardas Kashiram, the paternal cousin grandfather, the caste 'Mana' was entered in the years 1943 and 1958.

(vii) Narendra Keshavram Ghormare, the father of the petitioner, the caste 'Mana' was entered in the years 1970, 1972 and 1977.

(viii) Chandrashekhar Keshavram Ghormare, the nephew of the petitioner, the caste 'Mana' was entered in the years 1975 and 1978.

(ix) Rajesh Keshavram Ghormare, the uncle of the petitioner, the caste 'Mana' was entered in the year 1975.

(b) In the birth/death extracts in respect of -

(i) Female child born to Dolan Mana, the great great grandfather of the petitioner, the caste 'Mana' was entered in the year 1922.

(ii) Male child born to Dudeswar, the cousin grandfather of the petitioner, at Mouza Kumbhali, the caste 'Mana' was entered in the year 1916.

(iii) Manya, the cousin great great grandfather of the petitioner, the caste '**Kunbi**' was recorded in the year 1925. (This is a disputed entry).

(iv) Male child born to Kashiram, the great grandfather of the petitioner, the caste 'Mana' was entered in the year 1927.

(v) Kashiram s/o Puna, the great grandfather of the petitioner, the caste '**Patil Mana**' was entered in the year 1927.

(vi) Nandlala, the cousin great grandfather of the petitioner, the caste '**Patil Mana**' was entered in the year 1928.

(vii) Tulshiram Jaijairam Dudeswar, the caste '**Patil Mana**' was entered in the year 1953.

(viii) Sonpat, the cousin great great grandfather of the petitioner, the caste '**Patil Mana**' was entered in the year 1954.

(ix) Tima Norba s/o Dolan, the caste 'Patil Mana' was entered in the year 1955.

(x) In the death record in the name of Dudeswar s/o Mana, the cousin grandfather of the petitioner, the entry '**Patil Mana**' was recorded in the year 1953, and the remark given by the Police Vigilance Cell was that there is insertion in the word 'Mana' in different ink. The remark was given “मुळ अभिलेख मध्ये 'माना' शब्दामधील 'मा' या अक्षराची काना वेगळ्या शईने ओढल्याचे आढळून येते”.

(c) **In the revenue records -**

(i) The caste of Dudeswar s/o Mana, the paternal cousin cousin grandfather of the petitioner, was recorded in P-1 register as 'Mana' in the year 1918-19. (Document No.23)

(ii) the caste of Kashiram s/o Puna, the paternal real great grandfather of the petitioner, was recorded as 'Mana' in P-1 register in the year 1918-19. (Document No.23).

(iii) the caste of Dolan s/o Neu Patil was entered as 'Mana' in P-1 register in the year 1918-19. (Document No.56).

(iv) the caste of Dudeswar s/o Mana and Kashiram s/o Puna was entered as 'Mana' in P-1 register in the

year 1918-19. (Document No.57).

(v) The Vigilance Cell found the entry in the name of Dolan s/o Neu Patil in P-1 register, recorded as '**Mane Ku**' in the year 1918-19, and in respect of Kashiram s/o Puna, the paternal real great grandfather of the petitioner, the entry was found as '**Mana Ku**', and cousin grandfather Dudeswar s/o Mana, the entry was found as '**Ku Mana**'.

(vi) The entry in the name of Dudeswar s/o Mana, the great grandfather of the petitioner, was recorded as '**Mana Kunbi**' in P-6 register in the year 1918-19.

11. The matter was heard on several dates and the parties were put a specific question and time was granted to them to answer it. After going through the documents produced by the petitioner as well as those obtained by the Police Vigilance Cell and the findings recorded by the Committee, we find that the entry 'Mana' plays a dominant role in all the documents produced.

12. According to the Police Vigilance Cell reports and the findings recorded by the Committee, the caste of the petitioner and

his blood relatives is shown in certain documents as 'Patil Mana', 'Mane Ku', 'Mana Ku', 'Ku Mana', 'Ku Mane', 'Mana Kunbi' and 'Kunbi'. Mostly, the entries of 'Patil Mana', according to the Committee, are in the birth or death register extracts. The other entries like 'Mane Ku', 'Mana Ku', 'Ku Mana', 'Ku Mane', 'Ku Mane', 'Mana Kunbi', 'Kunbi', etc., according to the Committee, are found to be recorded in the revenue records.

13. On 27-6-2018, we, therefore, passed an order, which is reproduced below :

“We put a specific question to the learned AGP appearing for the Scrutiny Committee as to whether the entry 'Patil Mana' referred to in the order impugned, as shown in the documents represents altogether a different caste than 'Mana – Scheduled Tribe'. The answer is that there exists no caste like 'Patil Mana' and the 'Patil' is the suffix to the surname.

We then asked a specific question to the learned AGP appearing for the Scrutiny Committee, as to how entry 'Mane Ku' referred to in the impugned order, as shown in the documents, is understood by the Committee. The

petitioner and his forefathers are resident of village Kumbli and the contention of the petitioner is that 'Ku' indicating the short name of the village, is the suffix or prefix to the caste or tribe entry 'Mane' or 'Mana' and there is no separate caste or sub-caste, tribe or sub-tribe as “Ku Mana, Ku Mani, Mana Ku, or Mani Ku”. Reliance is placed on the clarification by the Revenue Department which issued such documents. We therefore expect the learned AGP appearing for the Scrutiny Committee to highlight before us the position in respect of it.

It is informed to us that certain documents were produced by the petitioner during the course of hearing, but the same were not forwarded to the Police Vigilance Cell for verification. We wanted to know from the Committee as to whether such documents were taken into consideration by the Committee without sending it for verification through the Police Vigilance Cell in exercise of its power under Rule 12(2) of the Rules, particularly if the findings are recorded in respect of these documents on their merits.

We also asked a specific question in respect of document at Sr. No.92, which is referred to as a zerox copy of the form of mutation register in respect of Kasi s/o Puna and Budeshwar s/o Mna or Mana issued on 13.09.1939. The finding of the Committee is that during the vigilance

enquiry, the Naib Tahsildar, Sakoli orally informed that such record was never issued by their office. We were represented to believe in this regard the letter dated 24.08.2017 produced before us, issued from the office of Naib Tahsildar, Sakoli and we find that it was in response to the communication dated 24.08.2017 in which the query was in respect of birth entries of certain blood relatives of the petitioner. We wanted the explanation of the Committee in respect of it.

The Police Vigilance Cell Report in respect of document P-6 'kista bandi khatawani Form B-1" of the year 1938-39, in the name of "Dudeshwar vald Mna Patil Mana' is referred to and it is stated that such document is not available. But we are shown such document at page 238 of the petition and we find that the entry in respect of Dudeshwar is of 'Mana Kunbi'. We therefore put a specific question to the learned AGP appearing for the Scrutiny Committee, as to whether the Scrutiny Committee wants to rely upon this document, particularly when this document is said to be non-existent by the Police Vigilance Cell.

We asked a specific question to the learned AGP appearing for the Scrutiny Committee to tell us as to whether "Mana Kunbi" is a separate caste in existence.

wp7000.17.odt

We direct the Committee to provide us a list of documents on which reliance is placed to reject the claim.

The Committee is expected to answer all these questions by tomorrow.

Put up on tomorrow, 28.06.2017.”

14. The Committee files its response to this order in writing in Marathi. In the school records of the blood relatives, the entry 'Mana' is consistent and there is no entry other than 'Mana'. The learned AGP for the Committee confirms its stand that there is no separate caste or tribe called as 'Patil Mana', and 'Patil' is the suffix to the surname in the birth and death extracts, which is followed by the caste or tribe 'Mana'. Thus, the significance of 'Patil Mana' to reject the claim is lost. In respect of the entries like 'Mane Ku', 'Mana Ku', 'Ku Mana', 'Ku Mane', etc., in the revenue records, the letter of the Deputy Superintendent, Land Records, clearly shows that prefix or suffix 'Ku' to the entry 'Mana', 'Mani' or 'Mane' is indicative of the name of Village Kumbhali, which is the place of residence of the petitioner or his blood relatives. The significance

of these entries to reject the claim is also lost. After taking instructions from the Committee, the learned AGP states that there is no separate caste or tribe by name 'Mana Kunbi' included in the list of Scheduled Caste, Scheduled Tribe, Other Backward Class or Special Backward Class category, in the State of Maharashtra.

15. In the order of the Committee, a specific finding is recorded that the father of the petitioner orally stated that a copy of P-6, which is a revenue record of 'Kista Bandi Khatawani Form B-1' of the year 1938-39, in the name of Kashiram s/o Puna Patil Mana, is a private record and not a public document. However, before this Court, after taking instructions from the Committee, it is conceded that P-6 is a revenue record and a public document. The finding in respect of insertions or corrections in the documents is insignificant, as it does not change the entry either one way or the other. The Committee has expressed in writing its apology for such kind of mistakes as a result of non-application of mind.

16. It is conceded before us that the Committee has taken into consideration certain documents produced by the petitioner during

wp7000.17.odt

the course of hearing, believing them to be true and correct, and without forwarding them to the Police Vigilance Cell for enquiry and verification, in its discretion under Rule 12(2) of the Rules and the findings are recorded that the entries in the City Reports in respect of the blood relatives of the petitioner showing the caste 'Mana' recorded on 15-3-1909, 13-3-1909, 22-9-1909, 28-12-1909, 15-3-1910, 13-3-1910, and 8-10-1910, and the revenue records, viz. P-1, P-6, S-16 and S-21, the documents of 'Kistabandi', 'Jamabandi', 'Bandobast Misal', etc., of the years 1909, 1915-16, 1919, and 1938-39 indicate the caste entry as 'Mana' in respect of the blood relatives of the petitioner. It is also brought to our notice by the Committee that the entries in the birth and death register extracts of 16-8-1916, 18-10-1927, 12-11-1954 and 16-10-1953 indicate the caste entry as 'Mana' in respect of the blood relatives of the petitioner. Thus, there is no impediment in considering these documents and relying upon them.

17. In view of the aforesaid position and appreciation of the entries contained in the documents of pre and post-constitutional period in the form of school records, birth and death extracts and

revenue records, we are of the view that the Committee has misconstrued the entries in the documents. The Police Vigilance Cell and the Committee has artificially attached 'Patil' as prefix to 'Mana', to show that 'Patil Mana' is a separate caste, which actually is a suffix to the surname. The entry 'Mana' in the documents is to be separately and independently read from the prefix 'Patil', as indicating a tribe. We are also of the view that prefix or suffix 'Ku', attached to the entry 'Mani', 'Mane' or 'Mana', is indicative of the name of Village of residence of the blood relatives of the petitioner, in respect of whom the entry is made – the Village being *Kumbhali*. The entries 'Mane Ku', 'Mana Ku', 'Ku Mana', etc., do not represent an independent caste or tribe or sub-caste or sub-tribe. The entries 'Mana', 'Mane', 'Mani', etc., in the documents have to be read independent of their prefix or suffix 'Ku'.

18. In the publication of Anthropological Survey of India, styled as 'People of India (Maharashtra), Volume XXX, Part Two', it is stated that the caste 'Mana' is also known as 'Mane' or 'Mani'. It is stated that etymologically, the word 'Mana' was probably derived from the word 'Mannya' or 'Mann', i.e. honour, which the

community held in high esteem. The Government Resolution dated 24-4-1985 also highlights the position that 'Mana' is known as 'Mane', 'Mani'. The Committee also does not dispute such position. It is neither the finding recorded by the Scrutiny Committee nor the fact that any separate caste or tribe or sub-caste/tribe as 'Mane', 'Mani' or 'Mannya' exists in the State of Maharashtra. Such castes/tribes are also not shown in the list of Vimukta Jatis, Nomadic Tribes, Other Backward Classes or Special Backward Classes maintained by the State Government. It is, therefore, of no significance that the community is described as 'Mana', 'Mani', 'Mane' or 'Mannya' and the entries have to be treated as that of 'Mana'. The Committee has, therefore, erred in relying upon the entries of 'Mane' and 'Mani' to reject the claim.

19. It is urged that the entry 'Mana' in all the documents is in the 'Caste' column and not in the column of 'Tribe' and there is no evidence on record to show that the petitioner or his blood relatives belong to 'Mana Scheduled Tribe'. In our view, the concept of recognized Scheduled Tribe for the purposes of giving benefits and concessions was not prevailing prior to 1950 and,

therefore, only caste or community to which a person belonged was stated in the birth, school and revenue records maintained. The documents are issued in the printed formats, which contain a column under heading "Caste" and there is no separate column of 'Tribe'. While entering the name, the distinction between the caste and tribe is ignored. It is the entire 'Mana' community all over the State which is conferred a status of recognized Scheduled Tribe. In view of this, no significance can be attached to the entry of 'Mana' in the 'Caste' column in the documents and to reject the claim for 'Mana Scheduled Tribe' on that count. The finding of the Committee to that extent cannot, therefore, be sustained.

20. In the decision of this Court in the case of *Mana Adim Jamat Mandal v. State of Maharashtra and others*, reported in 2003(3) *Mh.L.J.* 513, this Court considered a reference to 'Mana' in the book of "Castes and Tribes of Central Provinces, Volume IV" by Russell at pages 172 to 176. This Court also considered the settlement report of Chanda District for the year 1869 – Chapter III dealing with aboriginal tribes and also to the report of Backward Class Commission (Kalelkar Commission). A reference was also

made to the Government Resolutions dated 24-4-1985 and 15-6-1995, which clarified that 'Mana' in entry No.18 is a sub-tribe of 'Gond', also called and known as 'Mani', 'Mane'. It was clarified that there is a caste 'Mana', which is a sub-caste of 'Mana Kunbi', 'Badwaik Mana', 'Khand Mana', 'Kshatriya Mana', 'Maratha Mana', etc., which is not covered by entry No.18 of 'Gond', which is a main tribe. As such, a distinction was sought to be made between 'Mana Scheduled Tribe' called as 'Gond Mana' and 'Mana', which is not a sub-tribe of 'Gond' but a sub-caste of 'Mane-Kunbi', 'Badwaik Mana', 'Khand Mana', 'Kshatriya Mana', 'Maratha Mana', etc., for grant of benefits available to the Scheduled Tribes. This Court ultimately set aside all such Government Resolutions dated 24-4-1985, 19-6-1988 and 15-6-1995, by which entry No.18 was sought to be distinguished or clarified and explained as 'Manas', who have affinity with 'Gonds', or a sub-tribe of 'Gond'. It was held that 'Mana' in entry No.18 is a separate tribe, which has no affinity with 'Gonds'.

21. In the case of *State of Maharashtra v. Mana Adim Jamat Mandal*, reported in (2006) 3 Mh.L.J. (S.C.) 407 =

(2006) 4 SCC 98, the Apex Court confirmed the aforesaid view and dismissed the appeal, holding that the decision of the Apex Court in the case of *Dina v. Narayan Singh*, reported in 38 ELR 212, in which the distinction was made between 'Mana' on one hand and "Gond Mana', 'Kshatriya Mana', 'Badwaik Mana', 'Maratha Mana', 'Kunbi Mana', etc., on the other hand to deprive the benefits of entry of 'Mana' at Serial No.18 in the Constitution (Scheduled Tribes) Order, 1950 was impliedly overruled in the Constitution Bench decision of the Apex Court in the case of *State of Maharashtra v. Milind and others*, reported in (2001) 1 Mh.L.J. 1.

22. The Committee invited our attention to the fact that the State of Maharashtra had sought review of the judgment delivered by the Apex Court in the case of *Mana Adim Jamat Mandal* by preferring Review Petitions No.488 of 2006 and 522 of 2006, which were dismissed by the Apex Court on 10-8-2006. The State Government thereafter preferred Curative Petition (C) No.4 of 2008, which was also ultimately dismissed on 26-2-2008; as a result of which, the Government Resolutions dated 24-4-1985,

19-6-1985 and 15-6-1995 on the basis of which 'Mana' community was sought to be divided artificially into different categories, like Badwaik Mana', 'Khand Mana', 'Kshatriya Mana', 'Kunbi Mana', 'Maratha Mana', 'Gond Mana', 'Mani'/'Mane', etc., for the grant of benefits available to the Scheduled Tribes, did not survive.

23. In our view, appreciation of evidence and interpretation of the caste/tribe entries contained in the documents is not prohibited. What is prohibited is the interpretation of caste/tribe entries in the Constitution (Scheduled Castes/Scheduled Tribes) Order. For instance, if there are hundred documents like in this case, containing different kinds of entries of caste/tribe like 'Mana', 'Mane', 'Mani', 'Mana Kunbi', 'Kshatriya Mana', 'Khand Mana', 'Maratha Mana' and so on, the duty of the Court will be to ascertain the dominant entries having greater probative value and record a specific finding of conclusive nature as to whether entries can be construed as 'Mana Scheduled Tribe', which is an entry in the cluster of tribes at Serial No.18 in the Constitution (Scheduled Tribes) Order. Merely because certain documents indicate entry of caste/tribe other than 'Mana' is not enough to reject the claim.

What is prohibited is that the entry 'Mana' in Scheduled Tribes Order does not include or exclude the entries like 'Mana Kunbi', 'Kshatriya Mana', 'Khand Mana', 'Maratha Mana', 'Kunbi Mana' and so on, which are probably known to exist as separate caste/tribe or sub-caste/tribe. The interpretation, clarification, explanation of the entries in the Scheduled Tribes Order is not permitted. The interpretation of entries in the documents cannot be confused with the interpretation entry in the Scheduled Tribes Order.

24. The Division Bench of this Court in the decision of this Court in the case of *Gajanan s/o Pandurang Shende v. Head-Master, Govt. Ashram School, Dongargaon Salod and others*, reported in 2018(2) *Mh.L.J.* 460, to which one of us, R.K. Deshpande, J., is a party, has considered several aspects of the findings recorded by the Committee in detail and we need not repeat the same here. However, we would like to explain some position in para 12 of the said decision, which is reproduced below :

“12. In view of the decision of the Constitution Bench in Milind's case, any tribe or tribal community or part of or group within any tribe can be excluded from the list of Scheduled Tribes issued under Clause (1) of Article 342 of the Constitution of India only by the Parliament by law and by no other authority. To hold that 'Mana' in Entry No.18 in the Constitution (Scheduled Tribes) Order does not include 'Kshtriya Badwaik Mana', 'Maratha Mana', 'Kunbi Mana', etc., would amounting to permitting evidence to be let in to exclude certain 'Mana' communities from the recognized Scheduled Tribe. Such tinkering with the Presidential Order is not permissible. Once it is established that 'Mana' is a tribe or even a sub-tribe, it is not permissible to say that it is not a recognized Scheduled Tribe in Entry No.18 of the Order. The Scrutiny Committee has failed to understand such effect of overruling the decision in Dina's case.”

In para 12, we have held ***“To hold that 'Mana' in Entry No.18 in the Constitution (Scheduled Tribes) Order does not include 'Kshatriya Badwaik Mana', 'Maratha Mana', 'Kunbi Mana', etc., would amount to permitting evidence to be let in to exclude certain 'Mana' communities from the recognized Scheduled Tribe.”*** This observation is made after recording a

specific finding that the entries in the documents having probative value are interpreted and held to be of 'Mana' community and not 'Kshatriya Mana', 'Badwaik Mana', 'Maratha Mana' 'Kunbi Mana', etc. If on interpretation of entries in the document, it is held that entries are of 'Kshatriya Mana', 'Badwaik Mana', 'Badwaik Mana', 'Maratha Mana', 'Kunbi Mana', etc., the claim cannot be validated. The test to be applied is to find out first whether the entries contained in the documents produced are to be interpreted as the entry 'Mana', and whether it resembles with the entry 'Mana' at serial No.18 in the cluster of entries in the Constitution (Scheduled Tribes) Order, represented by tribe 'Gond'.

25. Keeping in view the factual position narrated above, the law laid down and on appreciation of the pre and post-constitutional documents of voluminous in nature in relation to the blood relatives of the petitioner, we hold that it is conclusively established that the entries in all such documents are that of 'Mana' community, which is a tribe in the cluster of tribes represented by 'Gond' at Serial No.18 in the Constitution (Scheduled Tribes) Order, 1950.

26. In the decision of the Apex Court in the case of *Anand v. Committee for Scrutiny and Verification of Tribe Claims*, reported in 2011(6) *Mh.L.J. (S.C.)* 919, it is made clear in para 22 that while dealing with the documentary evidence, greater reliance may be placed on pre-independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-independence documents. It adds that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant. In respect of affinity test, the Apex Court has laid down that a cautious approach has to be adopted and with the migration, modernization and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. It holds that the affinity test may not be recorded as litmus test for establishing the link of the applicant with the Scheduled Tribe. The affinity test is to be used to corroborate the documentary evidence and it is not to be used as the sole criteria to reject a claim.

27. We have no hesitation to hold that the petitioner having conclusively established his claim for 'Mana Scheduled Tribe' on the basis of the documents having probative value, there was no occasion for the Scrutiny Committee, in view of the decision of the Apex Court in *Anand's* case, cited supra, to raise a doubt and invoke the affinity test to hold that the petitioner has failed to establish his claim.

28. Be that as it may, the Committee has applied the affinity tests laid down in the Government Resolutions dated 24-4-1985, 19-6-1988 and 15-6-1995, which are essentially meant to find out as to whether the entry 'Mana' in the documents is a sub-tribe of 'Gond' or a sub-tribe of 'Kshatriya Mana', 'Badwaik Mana', 'Khand Mana', 'Kunbi Mana', 'Maratha Mana', etc. In view of the decision of the Apex Court in *Mana Adim Jamat Mandal's* case, cited supra, the community 'Mana' included in the cluster of tribes led by 'Gond' in entry No.18, is declared to be an independent tribe, which is neither a sub-tribe of 'Gond' nor a sub-tribe of 'Kshatriya Mana', 'Badwaik Mana', 'Khand Mana', 'Kunbi Mana', 'Maratha Mana', etc.

The Government Resolutions have already been set aside. Hence, the affinity tests prescribed in all such Government Resolutions have lost their significance and are no longer available to the Committee to reject the claim.

29. The decision of the Apex Court in *Kumari Madhuri Patil and another v. Addl. Commissioner, Tribal Development and others*, reported in (1994) 6 SCC 241, lays down in guideline No.5, the procedure for collecting the traits, characteristics, customs, rituals, etc., prevailing in a particular community and enquiry is required to be conducted and the statements of the persons having knowledge of social status, considered to be the genuine tribals are required to be recorded. An opportunity is also required to be given to the claimants to cross-examine such persons deposing the affinity test. It is only upon such a test laid down or prescribed, the affinity test can be invoked as a corroborative test and it cannot be used as a substantive evidence to reject the claim, which is established conclusively on the basis of the documents produced on record.

30. It is urged before us that while issuing the caste validity certificates in the names of the father and other blood relatives of the petitioner, the Police Vigilance Cell enquiry was not conducted. Rule 12(2) of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 being relevant, is reproduced below :

“12. Procedure to be followed by Scrutiny Committee.

(2) If the Scrutiny Committee is not satisfied with the documentary evidence produced by the applicant the Scrutiny Committee shall forward the applications to the Vigilance Cell for conducting the school, home and other enquiry.”

It is the discretion of the Scrutiny Committee whether the claim is to be forwarded to the Vigilance Cell for conducting school, home and other enquiry. If the Scrutiny Committee is not satisfied with the documentary evidence produced, then only it can forward the documents to the Vigilance Cell. But if the Committee records its satisfaction on the basis of documentary evidence

produced and issues a validity certificate, it cannot question its correctness, legality or binding nature or finality attached to it under sub-section (2) of Section 7 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Maharashtra Act No.XXIII of 2001) on the ground that the Police Vigilance Cell enquiry was not conducted. The Committee, in our view, was wrong in ignoring the caste validity certificates issued in the name of the father of the petitioner validating his claim for 'Mana Scheduled Tribe'.

31. This question has been dealt with by the Division Bench of this Court in the case of *Apoorva d/o Vinay Nichale v. Divisional Caste Certificate Scrutiny Committee No.1 and others*, reported in *2010(6) Mh.L.J. 401*. Para 7 of the said decision being relevant, is reproduced below :

“7. We thus come to the conclusion that when during the course of enquiry the candidate submits a caste validity

certificate granted earlier certifying that a blood relation of the candidate belongs to the same caste as that claimed by the applicant, the Committee may grant such certificate without calling for Vigilance Cell Report. However, if the committee finds that the earlier caste certificate is tainted by fraud or is granted without jurisdiction, the Committee may refuse to follow and may refuse to grant certificate to the applicant before it.”

The relevant portion in para 9 of the said decision is also reproduced below :

“9. ... In the circumstances, we are of the view that the committee which has expressed a doubt about the validity of caste claim of the petitioner and has described it as a mistake in its order, ought not to have arrived at a different conclusion. The matters pertaining to validity of caste have a great impact on the candidate as well as on the future generations in many matters varying from marriage to education and enjoyment, and therefore where a committee has given a finding about the validity of the caste of a candidate another committee ought not to refuse the same status to a blood relative who applies. A merely different view on the same facts would not entitle the committee

dealing with the subsequent caste claim to reject it. There is, however, no doubt as observed by us earlier that if a committee is of the view that the earlier certificate is obtained by fraud it would not be bound to follow the earlier caste validity certificate and is entitled to refuse the caste claim and also in addition initiate proceedings for cancellation of the earlier order. In this view of the matter, we are of the view that the petition must succeed. Rule is made absolute in above terms. The Caste Scrutiny Committee is directed to furnish the caste validity certificate to the petitioner.”

It is not the finding of the Committee that the father of the petitioner obtained the caste validity certificate by playing a fraud or that the grant of certificate was without jurisdiction. On the contrary, the certificates indicate that the same are issued in view of the decision of the Apex Court in Civil Appeal No.5270 of 2004. A merely different view on the same facts in a subsequent case of blood relative would not entitle the Committee to reject the claim. If the Committee is permitted to alter or change its view repeatedly, it would create an anomalous situation that each of the blood relatives would be of different caste/tribe and finality

attached would become redundant. In our view, therefore, the Committee ought to have validated the certificate in favour of the petitioner.

32. In view of above, the order passed by the Scrutiny Committee invalidating the claim of the petitioner for 'Mana Scheduled Tribe' cannot be sustained. The same will have to be quashed and set aside by granting a declaration that the petitioner has established his claim on the basis of the documents produced on record for 'Mana Scheduled Tribe'.

33. In the result, the petition is allowed and the following order is passed :

(I) The order dated 25-10-2017 passed by the Scheduled Tribe Certificate Scrutiny Committee, Nagpur, is hereby quashed and set aside.

(II) The claim of the petitioner for 'Mana Scheduled Tribe', which is an Entry at Serial No.18 in the Constitution

(Scheduled Tribes) Order, 1950 is held to be valid.

(III) The Committee is directed to issue the caste validity certificate to the petitioner within a period of ten days from today.

(IV) The respondents are directed to process the claim of the petitioner for admission to MBBS Course assuming that the claim of the petitioner is valid for 'Mana Scheduled Tribe', without waiting for the issuance of the caste validity certificate by the Scrutiny Committee.

34. Rule is made absolute in above terms. No order as to costs.

(Arun D. Upadhye, J.)

(R.K. Deshpande, J.)

Lanjewar, PS