



wp.8425.18,jud

1

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

**WRIT PETITION NO.8425 OF 2018**

**Petitioners** : 1] **Ku. Priyanka s/o Anil Choudhari,**  
Aged about 22 years, Occupation: Education.  
2] **Shri Akshay s/o Anil Choudhari,**  
Aged about 21 years, Occupation: Education.  
3] **Shri Nikhil s/o Anil Choudhari,**  
Aged about 18 years, Occupation: Education.  
,  
All r/o Pagora, Post Pahela,  
Tahsil & District Bhandara.

-- **Versus** --

**Respondent** : **Scheduled Tribes Caste Scrutiny  
Committee, Nagpur**  
through its Member Secretary.

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*Shri A.Z. Jibhkate, Advocate for the Petitioners.*  
*Mrs. Mayuri Deshmukh, A.G.P. for the Respondent.*

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**CORAM : SUNIL B. SHUKRE & S.M. MODAK, JJ.**

**DATE : 14<sup>th</sup> FEBRUARY, 2019.**

**ORAL JUDGMENT :-** (Per Sunil B. Shukre, J.)

**Rule.** Rule made returnable forthwith. Heard the learned  
Counsel for the parties finally by consent.

02] It is seen that the impugned order is primarily based upon the affinity test and that it does not give as much importance to the pre-constitutional documents as the law would expect the respondent-Committee to accord. It is well settled law that pre-constitutional documents have a greater probative value and if any affinity test is to be applied, it could be by way of corroboration only. But, the question of corroboration would arise only if there is some doubt about veracity of the constitutional documents. A useful reference in this regard can be made to the law laid down by Hon'ble Apex Court in the case of Anand vs. Committee for Scrutiny & Verification of Tribe Claims & others - 2011(6) Mh.L.J. 919 and also the Division Bench of this Court in the case of Saurabh Rajendra Wardekar vs. The Scheduled Caste Certificate Scrutiny Committee, Amravati in Writ Petition No.5805/2017. The reason being that the affinity test depends for its success upon the availability of the standard characteristics, standard traditions, standard customs and mores, and standard cultural practices about which there is a perceived dearth. It is also greatly affected by the onslaught of time resulting in inculcation of new habits, new customs and mores, and cultural practices by persons. However, the passage of time does not affect the pre-constitutional documents in this fashion and there was also no motive to gain any

undue benefit present at a time when reservations policy was not even thought of. They would, therefore, have higher probative value and it has always been accorded to them by Courts.

03] In the present case, there is no dispute about the fact that Natthu Manilal and Govindrao Balkrushnarao, both grandfather and great grandfathers from the paternal side of the petitioners were shown as belonging to 'Mana' caste in Birth and Death Register of Mouza Paghora, Police Station Adhyad, District Bhandara in the year 1943-44 and 1916-17 respectively. The relationship is also not in dispute. These being the pre-constitutional documents and there being no doubt about their genuineness, we are of the view that the facts of this case are governed by the settled position of law discussed earlier and, accordingly, we hold that the impugned order is illegal and arbitrary deserving it being quashed and set aside by this Court.

04] The writ petition is allowed. The impugned order is quashed and set aside. Respondent-Committee is directed to issue Validity Certificates to the petitioners as belonging to 'Mana- (Scheduled Tribe)' within a period of four weeks from the date of the order.

wp.8425.18,jud

4

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

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**(S.M. Modak, J.)**

**(Sunil B. Shukre, J.)**