



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

**WRIT PETITION NO. 3299 OF 2013**

Vilas s/o Tukaram Garate,  
Aged about 32 years, Occupation :  
Service as Peon, Resident of  
Viloda, Tah. Bhadrawati,  
Dist. Chandrapur.

**... Petitioner**

**VERSUS**

- (1) Scheduled Tribe Certificates  
Scrutiny Committee, Gadchiroli,  
Division Nagpur, through its  
Chairman, Office at Complex  
Area, Near Zilla Parishad  
Sankul, Gadchiroli, Tq. & Distt.  
Gadchiroli.
- (2) State of Maharashtra,  
through its Secretary, Tribal  
Development Department,  
Mantralaya, Mumbai-32.
- (3) The Head Master,  
Jijamata High School & Junior  
College, Iruptola, Tah.  
Dhanora, Distt. Gadchiroli.
- (4) The Education Officer (Primary)  
Zilla Parishad, Gadchiroli, Office  
at Complex Area, Near Zilla  
Parishad Sankul, Gadchiroli,  
Tq. & Distt. Gadchiroli.

**... Respondents**

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Shri P. P. Dhok, Advocate for the petitioner  
Shri D. P. Thakre Additional Government Pleader for the State/  
respondent no. 2

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**CORAM : R. K. DESHPANDE AND  
M. G. GIRATKAR, JJ.**

**DATE : 10-11-2017**

**Oral Judgment (Per : R. K. Deshpande, J)**

The challenge in this petition is to the order dated 6-5-2013 passed by the Scheduled Tribe Certificates Scrutiny Committee, Gadchiroli, Division Nagpur invalidating the caste claim of the petitioner for 'Mana', Scheduled Tribe Category which is at entry no. 18 in the Constitution (Scheduled Tribes) Order, 1950. The order further invalidates the caste certificate dated 28-6-2010 issued by the Sub Divisional Officer, Warora, District Chandrapur certifying that the petitioner belongs to 'Mana', Scheduled Tribe category.

2. The petitioner produced before the said committee five documents indicating caste of the petitioner, his father and grandfather as 'Mana'. The petitioner further produced validity certificate dated 31-5-2006 issued in the name of his real brother Vitthal Tukaram certifying that he belongs to 'Mana', Scheduled Tribe category.

3. The police vigilance cell conducted enquiry to find out whether the documents produced are genuine and to ascertain the

social customs, traditions and cultural traits of the community. The police vigilance cell found some additional documents containing caste entry 'Mana' in the name of the uncle of the petitioner Bakaram Madho for the year 1951.

4. The committee considered the issue no. 2 as to whether the tribe claim of the applicant is proved by way of documentary evidence and it records the finding that the caste of the petitioner and his forefather is consistently recorded as 'Mana' in their school and revenue record during the period 1918-19 to 1987. However, all these documents are rejected for the following reasons.

(a) that 'Mana' community was included in the list of Scheduled Tribes in relation to the State of Maharashtra for the first time in the year 1960, that too in the specified area only, and the petitioner has failed to establish that he or his forefathers hail from the said area and migrated to the present place of their residence, from the said specified scheduled area,

(b) that there are non-tribal communities like 'Badwaik Mana', 'Khand Mana', 'Kshatriya Mana', 'Kunbi Mana', 'Maratha Mana', 'Gond Mana', 'Mani'/'Mane', etc., and the petitioner has failed to satisfy crucial affinity test to establish that he belongs

to 'Mana, Scheduled Tribe', which is an entry at Serial No.18 in the Constitution (Scheduled Tribes) Order, 1950,

(c) that in the year 1967, 'Mana' community was included in the list of Other Backward Classes at Serial No.268 and later on in the list of Special Backward Classes at Serial No.2 in relation to the State of Maharashtra, and

(d) that the documents produced simply indicate the caste as 'Mana' and not 'Mana, Scheduled Tribe'.

5. In the decision of this Court in Writ Petition No.3308 of 2013 [*Gajanan s/o Pandurang Shende v. The Head-Master, Govt. Ashram School, Dongargaon Salod, Tah. Sindewahi, Distt. Chandrapur, and others*] decided on 8-11-2017, we have dealt with all the aforesaid reasoning and we point out below what we have held in the said decision :

6. In para 5 of the decision in *Gajanan's* case, we have held that the Committee was wrong in holding that 'Mana' community was included in the list of Scheduled Tribes Order in relation to the State of Maharashtra for the first time in the year 1960. We have also held that in fact, the said community was included in the said Order in the year 1956.

7. On the aspect of original place of residence and migration, we have held in para 7 of the said decision as under :

*“7. ... The Act No.108 of 1976 was published in the gazette on 29-9-1976, and the area restriction of Scheduled Tribes in the State of Maharashtra for all the tribes, including 'Mana' tribe, was deleted. The members of different tribes or communities in the State of Maharashtra included in Entry No.18, are treated and conferred with the status of recognized Scheduled Tribes, irrespective of their place of residence in the State. The net result of such deletion was that the two-fold requirements of ordinary place of residence in tribal areas and migration to non-tribal areas, was done away with.”*

8. Relying upon the decision of the Apex Court in the case of *Jaywant Dilip Pawar v. State of Maharashtra & Ors.*, delivered in Civil Appeal No.2336 of 2011 on 8-3-2017, we have held in *Gajanan's* case that the petitioner was not required to establish that either his forefathers were the ordinary residents of the place meant for the tribals in the Constitution (Scheduled Tribes) Order prevailing prior to 1976 or that his forefathers migrated from the said area to the present place of residence. We have also held that the Committee was in error in taking such a view.

9. On the other aspect that there are non-tribal communities like 'Badwaik Mana', 'Khand Mana', 'Kshatriya Mana', 'Kunbi Mana', 'Maratha Mana', 'Gond Mana', 'Mani'/'Mane', etc., we have considered the impact of the Constitution Bench decision of the Apex Court in the case of *State of Maharashtra v. Milind*, reported in 2001(1) Mh.L.J. 1, which overruled earlier decision in the case of *Dina v. Narayansing*, reported in 38 ELR 212. We have held in para 11 of the decision in *Gajanan's* case as under :

“11. ... The effect of overruling of the decision in *Dina's* case is that the entry 'Mana', which is now in the cluster of tribes at Serial No.18 in the Constitution (Scheduled Tribes) Order, has to be read as it is and no evidence can be let in, to explain that entry 'Mana' means the one which is either a 'sub-tribe of Gond' or synonym of 'Gond' and/or it is not a sub-tribe either of 'Maratha' or of any other caste or tribe.”

In para 12 of the said decision, we have held as under :

“12. ... To hold that 'Mana' in Entry No.18 in the Constitution (Scheduled Tribes) Order does not include 'Kashtriya 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. 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 view of the Constitution Bench decision in *Milind's* case, we hold that it is not permissible to invoke the affinity test to exclude certain 'Mana' communities from the recognized Scheduled Tribe.

10. On the aspect of inclusion of 'Mana' communities in the lists of Other Backward Classes and Special Backward Classes, we have relied upon the decision of this Court in *Mana Adim Jamat Mandal v. State of Maharashtra*, reported in 2003(3) *Mh.L.J.* 513, which is confirmed by the Apex Court in its decision in the case of *State of Maharashtra v. Mana Adim Jamat Mandal*, reported in (2006) 4 SCC 98. We have held in paras 13 and 14 of *Gajanan's* case as under :

*"13. ... This view has been confirmed by the Apex Court in the case of State of Maharashtra & Ors. v. Mana Adim Jamat Mandal, reported in (2006) 4 SCC 98, and it is specifically held that 'Mana' is a separate Scheduled Tribe by itself included in*

*Entry No.18 of the Constitution (Scheduled Tribes) Order and it is not a sub-tribe of 'Gond'."*

*"14. This Court has held and it is confirmed by the Apex Court in the aforesaid decisions that even if it is assumed that there was a separate entity, which is called as 'Mana' in Vidarbha Region, which has no affinity with 'Gond' tribe, that community would also fall within the scope of the Scheduled Tribes Order by virtue of the Amendment Act, 1976, and the State Government was not entitled to issue orders or circulars or resolutions contrary thereto. It holds that since under Entry 18, 'Manas' are specifically included in the list of Scheduled Tribes in relation to the State of Maharashtra, 'Manas' throughout the State must be deemed to be Scheduled Tribe by reason of provisions of the Scheduled Tribes Order. Once 'Manas' throughout the State are entitled to be treated as a Scheduled Tribe by reason of the Scheduled Tribes Order as it now stands, it is not open to the State Government to say otherwise, as it has purported to do in various Government Resolutions. It further holds that it is not open to the State Government or, indeed to this Court to embark upon an enquiry to determine whether a section of 'Manas' was excluded from the benefit of the Scheduled Tribes Order."*

The Apex Court has held that 'Mana' is a separate Scheduled Tribe in Entry No.18 and it is not a sub-tribe of 'Gond'. The Division Bench of



this Court has held that it is not open to the State Government or indeed to this Court to embark upon an enquiry to determine whether a section of 'Manas' was excluded from the benefit of Scheduled Tribes Order. In para 15 of *Gajanan's* case, we have held that the Committee was clearly in error in holding that 'Mana' community was included in the list of Other Backward Classes and later on in the list of Special Backward Classes, and though the petitioner has established that he belongs to 'Mana' community, it is not established that he belongs to 'Mana Scheduled Tribe'.

11. On the aspect of carving out a distinction that the documents of pre-Independence, produced on record, simply indicating the caste as 'Mana' and not 'Mana Scheduled Tribe', we have relied upon the decision of the Apex Court in the case of *E.V. Chinnaiah v. State of Andhra Pradesh*, reported in 2004(9) SCALE 316. We have held in para 18 of *Gajanan's* case as under :

“18. Applying the law laid down in *E.V. Chinnaiah's* case, it has to be held in the facts of the present that once it is clear that 'Mana' community is included in entry No.18 of the Constitution (Scheduled Tribes) Order, it has to be read as it is, representing a class of 'Mana' as a whole and it is not

*permissible either for the Executive or for the Scrutiny Committee to artificially sub-divide or sub-classify 'Mana' community as one having different groups, like 'Badwaik Mana', 'Khand Mana', 'Kshatriya Mana', 'Kunbi Mana', 'Maratha Mana', 'Gond Mana', 'Mani/Mane', etc., for the purposes of grant of benefits available to a recognized Scheduled Tribe. To exclude such persons from the entry 'Mana', to be recognized as Scheduled Tribe, amounts to interference, re-arrangement, re-grouping or re-classifying the caste 'Mana', found in the Presidential Order and would be violative not only of Article 342, but also of Article 14 of the Constitution of India. The classification of entry 'Mana' in different categories, like 'Badwaik Mana', 'Khand Mana', 'Kshatriya Mana', 'Kunbi Mana', 'Maratha Mana', 'Gond Mana', 'Mani/'Mane', etc., for the purpose of conferring a status as a recognized Scheduled Tribe is artificial and without any authority. The Committee has, therefore, committed an error in rejecting the claim by holding that the documents produced simply indicate the caste 'Mana' and not 'Mana, Scheduled Tribe'."*

We have held that after following the decision in E.V. Chinnaiah's case that 'Mana' community throughout the State is a class as a whole and to artificially explain or sub-divide it to exclude different groups like 'Badwaik Mana', 'Khand Mana', 'Kshatriya Mana', 'Kunbi Mana', 'Mani/'Mane', etc., for denying benefits of recognized Scheduled Tribe is

not only without any authority but violative of Articles 14 and 342 of the Constitution of India. We have held that the Committee was in error in rejecting the claim by holding that the documents produced simply indicate the caste 'Mana' and not 'Mana Scheduled Tribe'.

12. In para 19 of the said decision, we have held that 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. We have also held that the documents are issued in the printed format, which contains a column under the heading 'Caste' and there is no column of tribe. We have held that irrespective of the fact that it is a tribe, the name of tribe is shown in the column of caste, and while entering the name of caste or tribe, the distinction between the caste and the tribe is ignored.

13. On the aspect of primacy of documents over the affinity test, we have relied upon the decision of the Apex Court in the case of *Anand v. Committee for Scrutiny and Verification of Tribe Claims and others*, reported in (2012) 1 SCC 113, and applied the broad parameters

laid down therein. We have held that in view of the said decision of the Apex Court that 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.

14. In view of the aforesaid position of law, we proceed to decide the case of the petitioner on the basis of the documents produced on record. The committee itself record the finding that the caste of the petitioner and his forefather is consistently recorded as 'Mana' in their school and revenue record during the year 1918-19 to 1987. Genuineness of all these documents is not disputed. The blood relationship of the petitioner with the persons in whose names the documents are executed is also not in dispute. There is not even a single document produced on record indicating the caste of the petitioner other than 'Mana'. Even the police vigilance cell report shows one more document in the name of Bakaram Madho indicating caste as 'Mana' which is an extract of school register. In view of the law laid down by the Hon'ble Apex Court in the case of *Anand v. Committee for Scrutiny and Verification of Tribe Claims and others* cited supra, the documents have probative value and are required to be given affinity

test and it is only in the case of doubt that the affinity test to be made. In the absence of any other evidence on record indicating the caste of the petitioner other than 'Mana', in our view, the committee has committed an error in invalidating the claim of the petitioner.

15. It is not in dispute that the committee has issued validity certificate in the name of real brother of the petitioner Vitthal Tukaram on 31-5-2006 certifying that he belongs to 'Mana' which is at entry no. 18 in the Constitution (Scheduled Tribes) Order. In view of the decision of this Court in *Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No. 1 and ors.* reported in 2010(6) *Mh.L.J.* 401 and *Anand Vs. Committee for Scrutiny and Verification of Tribes Claims and others* reported in 2011(6) *Mh.L.J.* 919, in our view, it is not permissible for the committee to take a different view of the matter creating anomalous situation that real brother of the petitioner belongs to Mana, Scheduled Tribe category whereas the petitioner does not. We cannot sustain such finding of the committee.

16. In the result, writ petition is allowed as under :-

- (a) The order dated 6-5-2013 passed by the Scheduled Tribe Certificate Scrutiny Committee, Gadchiroli, Division Nagpur

invalidating the caste claim of the petitioner is hereby quashed and set aside.

(b) It is declared that the petitioner has established his claim for 'Mana', Scheduled Tribe which at serial no. 18 in the Constitution (Scheduled Tribes) Order, 1950. The Scheduled Tribe Certificate Scrutiny Committee, Gadchiroli, Division Nagpur is directed to issue caste validity certificate to the petitioner showing that he belongs to 'Mana', Scheduled Tribe during the period of four weeks from the date of production of copy of this judgment to it.

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

**JUDGE**

**JUDGE**

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