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

Writ Petition No.3308 of 2013

Gajanan s/o Pandurang Shende,
Aged about 50 years,
Occupation – Service,
R/o Mul, Tah. Mul,
Distt. Chandrapur. ... Petitioner

Versus

1. The Head-Master,
   Govt. Ashram School,
   Dongargaon Salod, Tah. Sindewahi,
   Distt. Chandrapur.

2. The Project Officer,
   Tribal Project, Chandrapur.

3. The Additional Tribal Commissioner,
   Tribal Division, Giripeth, Nagpur.

4. The Scheduled Tribe Caste Certificate
   Scrutiny Committee, Gadchiroli,
   through Vice Chairman. … Respondents

Ms P.D. Rane, Advocate for Petitioner.
Shri V.P. Gangane, Assistant Government Pleader for Respondent Nos.2 to 4.

Coram : R.K. Deshpande & M.G. Giratkar, JJ.
Date : 8th November, 2017

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

1. The challenge in this petition is to the order dated 2-3-2013 passed by the Scheduled Tribe Certificate Scrutiny Committee, Gadchiroli, Division Nagpur, invalidating the claim of the petitioner for 'Mana' (Scheduled Tribe Category) and consequently cancelling and confiscating the certificate dated 28-4-2011 issued in the name of the petitioner as belonging to 'Mana', Scheduled Tribe, which is an Entry No.18 in the Constitution (Scheduled Tribes) Order, 1950.

2. Before the Committee, the petitioner produced about six documents, which all record the caste of the petitioner and his blood relatives as 'Mana'. The oldest document is the revenue record of the year 1919-20 in the name of Patralya Bijya, the real grandfather of the petitioner. The another document is the school leaving certificate in the name of the father of the petitioner, in which an entry 'Mana' was made on 1-4-1946 at

the time of admission in the school. The petitioner produced the caste validity certificate dated 19-10-2005 in the name of Ramesh Sabalu, the cousin brother of the petitioner, and the another validity certificate dated 25-11-2010 in the name of Giraja Kawadu, the cousin sister of the petitioner, issued by the same Committee certifying their claim for 'Mana' Scheduled Tribe. The Police Vigilance Cell of the Committee also conducted an enquiry and concluded that the documents produced by the petitioner show his caste as 'Mana'.

3. The Committee records the finding that the entries in the school and revenue records of the blood relatives of the petitioner for the period from 1919-20 to 1946 consistently records the caste 'Mana'. However, all such documents are rejected mainly on the following findings :

(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 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,

(c) 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.

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

4. The President issued the Constitutional (Scheduled Tribes) Order, 1950 in exercise of the power conferred by clause (2) of Article 342 of the Constitution of India. By clause 2 of that Order, it was provided that the tribes or tribal communities, or parts of, or groups within, tribes or tribal communities, specified in Parts I to XXII of the Scheduled to the Order shall, in relation to the States to which those Parts respective relate, be deemed to be Scheduled Tribes so far as regards members thereof residents in the localities specified in relation to them respectively in those Parts of that Schedule.

5. Initially, Entry No.12 in the relevant Part in the Schedule to the Order read as “Gond, including Madia (Maria) and Mudia (Muria)”. By the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act No.63 of 1956, the said Entry No.12 was substituted by Entry No.12 in paragraph 7 of Part VIII(A) of the Schedule to the Order, which was as follows :

"7. In (1) Melghat tahsil of the Amravati district.

(2) Gadchiroli and Sironcha tahsils of the Chanda district.

(3) Kelapur, Wani and Yeotmal tasils of the Yeotmal district :-

12. Gond, including – Arakh or Arrakh, Agaria, Asur, Badi Maria or Bada Maria, Bhatola, Bhimma, Bhuta, Koilabhuta or Koilabhuti, Bhar, Bisonhorn Maria, Chota Maria, Dandami Maria, Dhuru or Dhurwa, Dhoba, Dhulia, Dorla, Gaiki, Gatta or Gatti, Gaita, Gond Gowari, Hill Maria, Kandra, Kalanga, Khatola, Koitar, Koya, Khirwar or Khirwara, Kucha Maria, Kuchaki Maria, Madia (Maria), ***Mana****, Mannewer, Moghya or Mogia or Monghya, Mudia (Muria), Nagarchi, Nagwanshi, Ojha, Raj, Sonjhari Jhareka, Thatia or Thotya, Wade Maria or Vade Maria."*

In view of the aforesaid position, the Committee is obviously wrong in holding that 'Mana' community was included in the list of Scheduled Tribes Order in relation to the State Maharashtra for the first time in the year 1960. In fact, it was included in the said Order in the year 1956.

6. In the aforesaid cluster of tribes in Entry No.12, 'Mana' is one of the recognized Scheduled Tribes. Clause 7 above the said entry, however, restricts the status of recognized Scheduled Tribes only to those tribals, who were residing in – (1) Melghat tahsil of the Amravati district, (2) Gadchiroli and Sironcha tahsils of the Chanda district, and (3) Kelapur, Wani and Yeotmal tahsils of the Yeotmal district. The status of recognized Scheduled Tribe was not extended to the tribals in Entry No.12 not residing in the aforestated three areas in the State of Maharashtra. To claim the status of a recognized Scheduled Tribe in the State, it was required to be established that the ordinary place of residence a tribal or his forefathers was one or more of the areas at Serial Nos.(1) to (3) in Clause 7 above the Entry No.12 or that there was an evidence of their migration in non-tribal areas.

7. Thereafter, the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 (Act No.108 of 1976) was passed by the Parliament. By this Act, the entire Schedule to the

Order, as it stood prior to amendment, was substituted by a new Schedule consisting of XVI Parts. Part IX of the new Schedule relates to the State of Maharashtra, and Entry No.18 of that Part reads as under :

> *"18. Gond, Rajgond, Arakh, Arrakh, Agaria, Asur, Badi Maria, Bada Maria, Bhatola, Bhimma, Bhuta, Koilabhuta, Koilabhuti, Bhar, Bisonhorn Maria, Chota Maria, Dandami Maria, Dhuru, Dhurwa, Dhoba, Dhulia, Dorla, Kaiki, Gatta, Gatti, Gaita, Gond Gowari, Hill Maria, Kandra, Kalanga, Khatola, Koitar, Koya, Khirwar, Khirwara, Kucha Maria, Kuchaki Maria, Madia, Maria,* ***Mana****, Mannewar, Moghya, Mogia, Monghya, Mudia, Muria, Nagarchi, Naikpod, Nagwanshi, Ojha, Raj, Sonjhari, Khareka, Thatia, Thotya, Wade Maria, Vade Maria."*

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. In 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, the decision of the Scrutiny Committee that the relatives of the appellants in the said case were not the residents of the area mentioned in the Presidential Order, 1956, is set aside and it is held that what the appellants were required to establish was that they belong to the community mentioned in the Schedule of the Act No.108 of 1976. It is thus clear that the petitioner in the present case, 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 his forefathers migrated from the said area to the present place of residence. The Committee was, therefore, wrong in asking the petitioner to establish such facts and rejecting the

claim on failure of it.

9. In the year 1967, a dispute arose in the decision of the Apex Court in the case of *Dina* v. *Narayan Singh*, reported in *38 ELR 212,* as to whether 'Mana' community included under Entry No.12 of the Constitution (Scheduled Tribes) Order, 1950, as amended in the year 1956, is a sub-tribe or 'Gond' or a sub-tribe of 'Maratha' or an independent tribe. The appellant in the said decision contested the election as a candidate belonging to 'Mana', Scheduled Tribe and not 'Gond Mana'. The High Court set aside the election holding that the appellant belonged to Kshatriya Badwaik Mana, which is a sub-caste of 'Maratha' and not 'Gond Mana' and, therefore, not eligible to contest the election. The question posed for consideraiton was whether it was intended to declare under Entry 12 *Manas* who are not *Gonds* as members of Scheduled Tribes. The Apex Court confirmed the decision of the High Court. It holds that 'Mana' in Entry No.12 is one which is a sub-tribe of 'Gond' or has some affinity with Gonds. It holds that there is a community called

'Mana' who are 'Marathas' and not 'Gonds' – known as 'Kshatriya Mana' or 'Kunbi Mana'. 'Mana' community under Entry 12 is neither a sub-tribe of 'Maratha' nor an independent tribe. It further holds that the appellant, elected candidate, belonged to 'Mana', which is a sub-caste of 'Maratha'.

10. The Constitution Bench of the Apex Court in the decision in the case of *State of Maharashtra* v. *Milind and others*, reported in *2001(1) Mh.L.J. 1*, has held in para 13, as under :

> *"13. … This apart when no other authority other than the Parliament, that too by law alone can amend the Presidential Orders, neither the State Governments nor the courts nor tribunals nor any authority can assume jurisdiction to hold enquiry and take evidence to declare that a caste or a tribe or part of or a group within a caste or tribe is included in Presidential Orders in one Entry or the other although they are not expressly and specifically included. A Court cannot alter or amend the said Presidential Orders for the very good reason that it has no power to do so within the meaning, content and scope of Articles 341 and 342. It*

is not possible to hold that either any enquiry is permissible or any evidence can be let in, in relation to a particular caste or tribe to say whether it is included within Presidential Orders when it is not so expressly included."

In para 21, the Apex Courts holds as under :

"21. In two cases, Bhaiya Ram Munda vs. Anirudh Patar & Ors., 1971(1) SCER 804 and Dina vs. Narayan Singh, 38 ELR 212, Division Benches of this Court took a contrary view to say that evidence is admissible for the purpose of showing what an Entry in the Presidential Order was intended to be while stating that the Entries in the Presidential Order have to be taken as final and the scope of enquiry and admissibility of evidence is confined within the limitations indicated."

The Apex Court has summarized the law laid down in para 34 as under :

"34. In the light of what is stated above, the following positions emerge :-

1. It is not at all permissible to hold any enquiry of let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the concerned Entry in the Constitution (Scheduled Tribes) Order, 1950.

2. The Scheduled Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it.

3. A notification issued under Clause (1) of Article 342, specifying Scheduled Tribes, can be amended only by law to be made by the Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under Clause (1) of Article 342 only by the Parliament by law and by no other authority.

4. It is not open to State Government or courts or tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under Clause (1) of Article 342.

5. Decisions of the Division Benches of this Court in Bhaiya Ram Munda vs. Anirudh Patar & others, 1971(1) SCER 804 and Dina vs. Narayan Singh, 38 ELR 212, did not lay down law correctly in stating that the enquiry was permissible and the evidence was admissible within the limitations indicated for the purpose of showing what an entry in the Presidential Order was intended to be. As stated in position (1) above no enquiry at all is permissible and no evidence can be let in, in the matter."

The earlier decision of the Apex Court in *Dina's* case has been overruled by the Constitution Bench decision of the Apex Court in *Milind's* case. What is the effect of the decision of the Constitution Bench in *Milind's* case in overruling *Dina's* case need to be seen.

11. In *Dina's* case, the Apex Court considered the evidence led to establish that 'Mana' in Entry No.12 in the Constitution (Scheduled Tribes) Order, 1950 in relation to the State of Maharashtra was of 'Mana', which is a sub-tribe of 'Gond' (a main tribe) and it was not of 'Kashtriya Badwaik Mana', which is a sub-tribe of 'Maratha'. The Court also rejected the argument that 'Mana' was an independent tribe, which had no affinity with 'Gond'. 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.

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 '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.

13. In the decision of the Division Bench 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*, it is held in para 22 as under :

> *"22. It is clear from the plain reading of the aforesaid propositions that the Supreme Court was of the view that Dina's case – 38 ELR 212 was not decided correctly*

to the extent it held that enquiry was permissible and evidence was admissible for the purpose of showing what an entry in the Presidential Order was intended to be. In fact the court has clearly observed that no enquiry at all is permissible and no evidence can be let in, in the matter. In our view the Supreme Court decision in second Dina's case i.e. Dadaji @ Dina vs. Sukhdeo Baba and others which considered the effect of omission of the word "including", also cannot be taken to be good law after the decision of the Constitution Bench in State of Maharashtra vs. Milind, though the said decision is not expressly overruled. The Constitution Bench overruled the first Dina case i.e. Dina vs. Narayan Singh with reference to Entry 12 of the Scheduled Tribes Order though the court did not specifically refer to second Dina's case. It is needless to say that the same stood impliedly overruled as the law declared by the Constitution Bench in Milind's case was contrary to what was stated in second Dina's case."

In para 24 of the said decision, this Court has held as under :

"24. … In any event even if it is assumed that there was a separate community which is called as Mana in

Vidharbha region which has no affinity with Gond tribe that community would also fall within the scope of 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. 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. The Mana community in the instant case having been listed in the Scheduled Tribes Order as it now stands, 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."

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.

15. The two decisions in *Mana Adim Jamat's* case supports the view which we have taken. In view of the aforesaid law laid down by this Court and the Apex Court, 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.

16. In the decision of the Apex Court in the case of *E.V. Chinnaiah* v. *State of Andhra Pradesh & Ors.*, reported in *2004(9) SCALE 316*, it was a case where the State of Andhra Pradesh appointed a Commission headed by Justice Ramachandra Raju (Retd.) to identify the groups amongst the Scheduled Castes found in the List prepared under Article 341 of the Constitution of India by the President, who had failed to secure the benefit of the reservations provided for Scheduled Castes in the State in admission to professional colleges and appointment to services in the State. Accepting the report, Andhra Pradesh Scheduled Castes (Rationalisation of Reservation) Act, 2000 was brought into force with effect from 2-5-2000, which divided 57 castes enumerated in the Presidential List into four groups based on *inter se* backwardness and fixed the quota in the reservation. This was the subject-matter of challenge.

17. Apart from the challenge to competency of the State Legislature to tinker with the Presidential Scheduled Castes

Order, a challenge was also considered in *E.V. Chinnaiah's* case that the said enactment creates classification or micro-classification of the Scheduled Castes violating Article 14 of the Constitution of India. While deciding the question before it, the Apex Court has laid down the principles of law, which are summed up as under :

> *"(A) There can be only one List of Scheduled Castes in regard to a State and it includes all specified castes, races or tribes or part or groups notified in that Presidential List.* ***[Para 14]***
>
> *(B) Any inclusion or exclusion from the said list can only be done by an Act by the Parliament, under Article 341(2) of the Constitution of India.* ***[Para 14]***
>
> *(C) That except for a limited purpose of making exclusion or inclusion in the List by an Act of Parliament there is no provision in the entire constitution either to sub-divide, sub-classify or sub-group these castes which are found in the Presidential List of Scheduled Castes.* ***[Para 14]***

(D) Any executive action or legislative enactment which interferes, disturbs, re-arranges, regroups, reclassifies the various castes found in the Presidential List will be violative of the scheme of constitution and will be violative of Article 341 of the Constitution. ***[Para 21]***

(E) The Castes once included in the Presidential List, form a class by themselves. Any division of these classes of persons based on any consideration would amount to tinkering with Presidential List. ***[Para 28]***

(F) The conglomeration of castes given in Presidential Order, should be considered as representing a class as a whole. If a class within a class of members of the Scheduled Castes is created, the same would amount to tinkering with the List. Such sub-classification would be violative of Article 14 of the Constitution of India. ***[Para 43]***"

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'.

19. 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 format, which contains a column under the heading 'Caste' and there is no column of tribe. Irrespective of the fact that it is a tribe, the name of tribe is shown in column of caste. While entering the name, the distinction between caste and tribe is ignored. It is the entire 'Mana' community all over the State, which is conferred a status of a recognized Scheduled Tribe in the State. The entry 'Mana' at serial No.18 in the Constitution (Scheduled Tribes) Order has, therefore, to be read as it is and no evidence can be led to exclude certain communities of 'Mana' from granting protection or benefits. The finding of the Committee to that extent cannot, therefore, be sustained.

20. In 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*, the Apex Court has laid down in para 22 of its decision broad parameters, which could be kept in mind while dealing with a caste claim. Para 22 is, therefore, reproduced below :

> *"22. It is manifest from the aforeextracted paragraph that the genuineness of a caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but also on the affinity test, which would include the anthropological and ethnological traits, etc., of the applicant. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. Nevertheless, we feel that the following broad parameters could be kept in view while dealing with a caste claim:*
>
> > *(i) While dealing with 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. In case the applicant is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact, the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add 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;

(ii) While applying the affinity test, which focuses on the ethnological connections with the Scheduled Tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation 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. Hence, the affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a Scheduled Tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribe's peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies, etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim."*

The Apex Court has in clear terms held 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 the affinity test, the Apex Court has laid down that a cautious approach has to be adopted, and with the migrations, modernisation 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 regarded as litmus test for establishing the link of the applicant with a 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. Keeping in mind these parameters, each case will have to be tested on its own facts.

21. In view of the undisputed factual position on record and availability of the documents having probative value of pre-independence period, we are of the view that the Committee was in error in rejecting the claim of the petitioner for 'Mana', Scheduled Tribe. The order, therefore, needs to be set aside with a direction to the Committee to issue a caste validity certificate

in the name of the petitioner showing him as belonging to 'Mana', Scheduled Tribe, which is an Entry No.18 in the Constitution (Scheduled Tribes) Order, 1950.

22. In the result, the petition is allowed. The order dated 2-3-2013 passed by the Scheduled Tribe Certificate Scrutiny Committee, Gadchiroli, Division Nagpur, is hereby quashed and set aside. It is held that the petitioner has established his claim for 'Mana' Community, which is entry No.18 in the Constitution (Scheduled Tribes) Order, 1950. The Committee is directed to issue validity certificate in the name of the petitioner accordingly within a period of one month from today.

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

24. Put up after one month to see compliance.

(M.G. Giratkar, J.) **(R.K. Deshpande, J.)**

Lanjewar, PS