

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

WRIT PETITION NO. 4284 OF 2013

Yogeshwar Vitthalrao Dhok,
aged about 19 years, Occ. Student,
R/o. Bhadrawati, Tah.Bhadrawati,
Distt. Chandrapur

PETITIONER

...VERSUS...

1. The Director of Technical Education,
Maharashtra State, Mumbai.
2. The Principal,
Rajaram Bapu Institute of Technology,
Rajaram Nagar, Islampur,
Distt. Sangli,
3. The Vice-Chancellor,
Shivaji University, Sangli.
4. The Scheduled Tribe Caste Certificate
Scrutiny Committee, Gadchiroli,
through Vice Chairman.

RESPONDENTS

Ms. Priti Rane, Advocate for the petitioner.
Shri N.G.Moharir, Advocate for Respondent No. 2
Shri N.S.Rao, Advocate for Respondent Nos. 1 and 4

CORAM: R. K. DESHPANDE AND

M.G.GIRATKAR, JJ.

DATE : 15th NOVEMBER, 2017 .

JUDGMENT (Per R.K.Deshpande, J.)

1] The challenge in this petition is to the order
dated 06.06.2013 passed by the Scheduled Tribe Caste
Certificate Scrutiny Committee, Gadchiroli, Division, Nagpur,

invalidating the caste claim of the petitioner for Mana - Scheduled Tribe, which is an entry at Sr. No.18 in the Constitution Scheduled Tribe Order, 1950, and cancelling and confiscating the caste certificate dated 19.03.2010 issued by the Sub Divisional Officer, Warora, District Chandrapur in the name of the petitioner, certifying that he belongs to Mana – Scheduled Tribe category.

2] Before the Committee, the petitioner produced 13 documents of his blood relatives including the father, grand father, great grand father showing their caste as "Mana" and the oldest document is of 1918-19, which is a revenue record in the name of one Narayan Zitu, great grand father of the petitioner. The Police Vigilance Cell conducted the home enquiry and found that, in the extract of school admission register in the name of Vithu Dhok, father of the petitioner, an entry of 01.08.1956 is recorded as "Mane" in the caste column. The said document is not produced on record. On the contrary, the school leaving certificate and extract of school admission register in respect of the same person, father of the petitioner, the entry is recorded as "Mana" in the caste column on 01.06.1958. Be that as it

may, the documents prior to 1956 indicate the caste as "Mana" recorded in the documents in respect of the paternal blood relatives of the petitioner.

3] While dealing with all these documents in para 16 of the order, the Committee holds that though the caste of the petitioner's grand father and great grand father is recorded as "Mana" in the year 1954-55, 1918-1999 and then consistently recorded as "Mana" during the period 1966 to 2007, which rejects all these documents 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'.

4] 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.

5] 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.

6] 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."

7] 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.

8] 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.

9] 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'.

10] 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 subdivide 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'.

11] 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 not 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.

12] 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.

13] Keeping in view the parameters laid down by the Apex Court in *Anand Katole's* case, cited supra, it has to be

held that the petitioner has established on the basis of documentary evidence that he belongs to "Mana" which is an entry at Sr.No. 18 in the Constitution Scheduled Tribes Order and there is no room for any doubt so as to invoke the affinity test to reject the claim for "Mana – Scheduled Tribe" category.

14] The petitioner also produced on record the caste validity certificate dated 17.08.2007 issued in the name of Satish Champatrao Dhok, cousin brother of the petitioner, showing that he belongs to "Mana–Scheduled Tribe" category. The Committee has rejected the said document by observing that perusal of the validity holder's case file reveals that the same has been issued without conducting vigilance inquiry and without testing affinity. In view of the decision of the Division Bench of this Court in *Apoorva Nichale's* case, it is not open for the Committee to take a different view of the matter, unless there is a finding recorded that the caste validity certificate was obtained by practicing fraud and misrepresentation, which is not the finding recorded by the Committee in the present case and it was, therefore, not possible for the Committee to take a different view of the

matter.

15] It is reported that Respondent No.2 College is not releasing the documents of the petitioner on the ground that the petitioner has failed to pay the dues recoverable from him as a candidate belonging to "open category". The learned counsel for the petitioner submits that all the dues have been paid by the petitioner to the respondent No.2 College as a candidate belonging to "Scheduled Tribe category". If this is the position, then respondent No.2 College will have to be directed to release all the documents to the petitioner upon satisfaction that the petitioner has paid all the dues as a candidate belonging to "Scheduled Tribe category" and it shall not insist upon the payment of dues by the petitioner as a candidate belonging to "open category".

16] In the result, writ petition is allowed as under;

(a) The order dated 06.06.2013 passed by the Scheduled Tribe Certificate Scrutiny Committee, Gadchiroli is hereby quashed as set aside.

(b) It is declared that the caste certificate dated 19.03.2010 produced by the petitioner, issued by the

Sub Divisional Officer, Warora, District-Chandrapur, is valid, showing that petitioner belongs to "Mana-Scheduled Tribe" category, which is an entry at Sr.No. 18 of the Constitution Scheduled Tribe Order.

- (c) The Committee is, therefore, directed to issue caste validity certificate in the name of the petitioner within a period of four weeks from the date of production of the order of this Court before the Committee.
- (d) The respondent No.2 is directed to release all the documents of the petitioner in the light of what we have observed in the matter and without insisting for payment of fees as a candidate belonging to 'open category'. The documents be released to the petitioner within a period of two weeks from the date of production of the order of this Court before it.

In view of above, the civil applications do not survive.

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

JUDGE

JUDGE

Rvjalit