

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

WRIT PETITION NO. 3643 OF 2013

Shubham Diwakar Dhok,
aged about 18 years, Occ. Student,
through Natural Guardian father,
Diwakar s/o Maroti Dhok, aged 48 years,
Occ. Service, R/o. Kokewada (Tukum),
Tah. Bhadrawati, Distt. Chandrapur.....

PETITIONER

...VERSUS...

1. Scheduled Tribe Certificate 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 Director,
Technical Education, Maharashtra
State, Mumbai, 3, Mahapalika Marg,
Post Box No. 1967, Mumbai.
4. The Principal,
D.Y.Patil College of Engineering
& Technology, Kasba Bawada,
Kolhapur.
5. The Registrar, Shivaji University,
Kolhapur, Tah. Karveer, Distt.
Kolhapur ..

RESPONDENTS

Shri P.P. Dhok, Advocate for the petitioner.
Shri M.K.Pathan, AGP for Respondent Nos. 1 to 3
None for respondent Nos. 4 and 5

CORAM: R. K. DESHPANDE AND

M.G.GIRATKAR, JJ.

DATE OF RESERVING THE JUDGMENT : 29th NOVEMBER, 2017 .

DATE OF PRONOUNCING THE JUDGMENT : 11th DECEMBER, 2017

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

1] The claim of the petitioner for grant of validity certificate as a person belonging to Mana - Scheduled Tribe, which is an entry at Sr. No.18 in the Constitution Scheduled Tribe Order, 1950, has been rejected by the Scrutiny Committee at Gadchiroli by its order dated 11.06.2013 and cancelled and confiscated the Caste Certificate, dated 02.06.2012 issued by the Sub Divisional Officer, Warora, Distt. Chandra, which is the subject matter of challenge in this petition.

2] Before the Committee, the petitioner has produced 11 documents, all containing the entry of caste "Mana". The oldest document is of the revenue record of 1918-19 in the name of Patosa s/o Paiku Mana, which is rejected by the Committee on the ground that the petitioner has failed to establish his relation. The another document is the school leaving certificate of 11.07.1950 in the name of Maroti Shivram Dhok, grandfather of the petitioner, showing

the entry of caste "Mana". The another document is the school leaving certificate of 16.07.1975 in the name of Diwakar Dhok, father of the petitioner, containing the entry of caste "Mana". The next document is the sale-deed dated 27.03.1978 in the name of Shivram Shrawan Dhok, great grandfather of the petitioner. The Police Vigilance Cell conducted home enquiry and found one more document of revenue entry of the year 1918-19 in the name of Dago s/o Ghumya, showing his caste as Mana, but it is rejected by the said Committee on the ground that the relation of the petitioner with the said person is not established.

3] The petitioner accepts that the person Dago s/o Ghumya in whose name revenue entry of 1918-19 stands, showing his case as "Mana", is not related to him, but it is in respect of the sale deed under which his great grandfather Shivram purchased the property from Dago s/o Ghumya. The Committee records the finding in paragraph 14 of its order that the caste of the petitioner and his forefathers is consistently recorded as 'Mana' in their school and revenue records during the period 1950-2007, but rejects the claim by applying affinity test recording the reasons as under;

" (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 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'.

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] In view of the finding of the said Committee that the caste of the petitioner and his forefathers is consistently

recorded as "Mana" in the school and revenue record during the period from 1950 to 2007 and the fact that the sale deed in the name of Shivram, the great grandfather of the petitioner shows the caste as "Mana", the Committee could not have rejected the claim by applying affinity test. The documents have probative value have to be given primacy over the affinity test. The Committee has, therefore, committed an error in applying the affinity test to reject the claim.

14] The father of the petitioner was issued a validity certificate dated 28.08.2008 validating his caste claim for "Mana – Scheduled Tribe". The Committee rejects the said claim holding that the said certificate was not issued by following the procedure of conducting vigilance cell enquiry under Rule 12 of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003. It is the discretion of the Committee to call for the report from the Police Vigilance Cell after making enquiry. If the Committee did not think it necessary while granting validity certificate to the father of the petitioner to conduct Police Vigilance Cell enquiry, then it is not open now for the

Committee to reject the said certificate on the ground that no enquiry was conducted. In view of the decision of the Division Bench of this Court in the case of *Apoorva Vinay Nichale vrs. Divisional Caste Certificate Scrutiny Committee No.1*, reported in **2010 (6) Mh.L.J. 401**, the Committee ought to have held that the petitioner was entitled to issue caste validity certificate and no different view could have been taken, resulting in enormous situation that the father of the petitioner belongs to Mana-Scheduled Tribe, whereas the petitioner does not .

15] In the result, writ petition is allowed. The order dated 11.06.2013 passed by the Scheduled Tribe Certificate Scrutiny Committee, Gadchiroli, invalidating the caste claim of the petitioner for Mana – Scheduled Tribe category is hereby quashed as set aside and the following order is passed.

(i) The Caste Certificate dated 02.06.2012 produced by the petitioner is held to be valid, certifying that he belongs to Mana – Scheduled Tribe Category, which is an entry at Sr.No. 18 of the Constitution Scheduled Tribe Order.

(ii) The Committee is directed to issue validity certificate accordingly in the name of the petitioner within a period of one month from the date of production of the order of this Court before the Committee.

(iii) Respondent Nos. 3 to 5 shall issue all the documents to the petitioner in relation to his admission and the result, if any, without insisting upon for payment of fees as a candidate belonging to 'open category' within the period of two weeks from the date of production of this order without waiting for the certificate of validity from the Scrutiny Committee.

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

JUDGE

JUDGE

Rvjalit