



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

WRIT PETITION NO. 4098 OF 2013

Ku. Shivangi d/o Shankar Choudhari,
Aged about 19 years, Occupation : Student,
R/o Laxminagar, Chandrapur,
Tah. and Distt. 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 Director, Technical Education
Maharashtra State, Mumbai, 3,
Mahapalika Marg, Post Box No.
1967, Mumbai – 400 001.
- (4) The Principal, Government
Engineering Chandrapur, Prasanna
Petrol Pump, Ballarshah road,
Babupeth, Chandrapur.
- (5) The Registrar, Gondwana
University, Gadchiroli, Complex
Area, Near Zilla Parishad Sankul,
Gadchiroli, Tq. & Distt. Gadchiroli.

... Respondents

Shri P. P. Dhok, Advocate for the petitioner
Shri N. S. Rao, Assistant Government Pleader for the respondent
nos. 1 to 4
None for the respondent no. 5

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

DATE : 29-11-2017

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

This petition is filed by the petitioner challenging the order dated 11-6-2013 passed by the Scheduled Tribe Certificate Scrutiny Committee, Gadchiroli invalidating her claim for 'Mana', Scheduled Tribe which is a entry at serial no. 18 in the Constitution (Scheduled Tribes) Order, 1950 and cancelling and confiscating the caste certificate dated 30-4-2011 issued by the Sub Divisional Officer, Warora certifying that the petitioner belongs to 'Mana', Scheduled Tribe.

2. Before the said committee, the petitioner produced 8 documents in support of her claim for 'Mana', Scheduled Tribe. The oldest document produced is the extract of school admission register in the name of Mahadeo Rakhadu, the grandfather of the petitioner recording caste entry as 'Mana' on 6-8-1945. The school leaving

certificate in the name of Shankarrao, the father of the petitioner contains entry 'Mana' (Scheduled Tribe) made on 6-8-1984. The other four documents produced on record issued in the name of the petitioner and his father indicate the caste as 'Hindu Mana'. The oldest document in it bearing the entry of 22-6-1967. The petitioner also produced two caste validity certificates dated 12-7-2007 and 4-2-2008 in the name of Sanjay, real uncle and Sandip, the real brother validating their claim for 'Mana', Scheduled Tribe. The Police Vigilance Cell conducted home enquiry and found that all the entries are correct and relate to the blood relatives of the petitioner mentioning caste as 'Mana'.

3. In paragraph 15 of the order, the committee holds that in the documentary evidence produced on record, the caste of the petitioner and her forefathers is consistently recorded as 'Mana' in the school and revenue records during the period from 1945 to 2010. It however, rejects the said 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 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 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. In view of the aforesaid position of law, the committee having accepted that from 1945 to 2010, all the documents indicate the caste 'Mana', could not have rejected the claim of the petitioner by applying affinity test, particularly, in view of the law laid down by the Apex Court in *Anand v. Committee for Scrutiny and Verification of Tribe Claims and others* (cited supra) to the effect that the affinity test applied only in case of doubt.

13. So far as, the entries regarding 'Hindu Mana' are concerned, it is neither the finding recorded by the scrutiny committee nor it is a fact that any separate caste or tribe or sub-caste or tribe as 'Hindu Mana'

exists in the State of Maharashtra. Such caste has also not shown in the list of Vimukta Jatis, Nomadic Tribes, Other Backward Classes or Special Backward Classes maintained by the State of Maharashtra for grant of benefits. The word 'Hindu' in the entry indicate religion whereas 'Mana' indicate tribe. Obviously, prefix Hindu to Mana was wrong and insignificant.

14. The petitioner has produced two caste validity certificates dated 12-7-2007 and 4-2-2008 in the names of Sanjay and Sandip, the paternal uncle and real brother of the petitioner validating their claim for 'Mana', Scheduled Tribe. The committee was in error in holding that no police vigilance cell enquiry was conducted and therefore, the certificates cannot be relied upon. 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 conduct police vigilance cell enquiry and if the committee is satisfied that the documents produced on record are enough to validate the claim, it need not conduct the enquiry through police vigilance. In the light of the decision of the Division Bench in the case of *Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No. 1 and ors.*

reported in 2010(6) *Mh.L.J.* 401, the committee has no option to grant validity certificate in the name of petitioner for 'Mana', Scheduled Tribe to avoid anomalous situation of blood relatives belong to different casts or tribe. The findings recorded by the committee cannot therefore be sustained.

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

(a) The order dated 11-6-2013 passed by the Scheduled Tribe Certificate Scrutiny Committee, Gadchiroli, Division Nagpur invalidating the caste claim of the petitioner for 'Mana', Scheduled Tribe is hereby quashed and set aside.

(b) It is declared that the caste certificate dated 30-4-2011 issued by the Sub Divisional Officer, Warora in the name of the petitioner certifying that she belongs to 'Mana', Scheduled Tribe which is at serial no. 18 in the Constitution (Scheduled Tribes) Order, 1950 is held to be valid.

(c) The Scheduled Tribe Certificate Scrutiny Committee, Gadchiroli, Division Nagpur is, therefore, directed to

accordingly, issue caste validity certificate to the petitioner validating her claim for 'Mana', Scheduled Tribe category within a period of four weeks from the date of production of copy of this judgment before it.

(d) The respondent nos. 2 to 5 are directed to release all the documents and monetary benefits to the petitioner as a candidate belonging to Scheduled Tribe category and if any amount is recovered or deposited by the petitioner for release of such documents, the same be refunded to the petitioner.

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

JUDGE

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