

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

WRIT PETITION NO.7033/2017

PETITIONER: Gayatri d/o Janardan Nannaware
Aged about 20 years, Occ. Student,
R/o Wanadongri, Nagpur.

...VERSUS...

RESPONDENTS: 1. The Joint Commissioner,
Scheduled Tribe Caste Certificate
Scrutiny Committee, Gadchiroli Division,
Gadchiroli, through its Member.

2. The Directorate of Medical
Education & Research, Mumbai.

3. The Dean, Government Medical College,
Akola, Distt. Akola.

4. The Vice-Chancellor/Registrar,
Maharashtra University of Health,
Sciences (MUHS), Mhasrul Road,
Nasik.

Ms P.D. Rane, Counsel for petitioner
Shri A.M. Joshi, AGP for respondent nos.1 to 3

**CORAM : R.K. DESHPANDE AND
ARUN D. UPADHYE, JJ.**

DATE : 12/06/2018

ORAL JUDGMENT (PER : R.K. DESHPANDE, J.)

1. Rule, made returnable forthwith. By consent, the writ petition is heard finally.

2. The challenge in this petition is to the order dated 27/10/2017 passed by the Scheduled Tribe Certificate Scrutiny Committee, Gadchiroli, Division Nagpur, invalidating the claim of the petitioner for Mana Scheduled Tribe, which is an entry at serial no.18 in the Constitution (Scheduled Tribes) Order, 1950.

3. The claim of the petitioner was examined by the Scrutiny Committee for the purposes of her admission to M.B.B.S. Course. The petitioner has successfully completed NEET examination and is awaiting her consideration for admission as a candidate belonging to Scheduled Tribe category.

4. Before the Scrutiny Committee, the petitioner produced several documents including the school and revenue records of herself as well as her forefathers/blood relatives containing entry

“Mana”. The oldest document is of 18/7/1927, which is a birth certificate and the entry in the Kotwal Book regarding birth of male child born to Istari showing the caste as “Mana”. The birth certificate is also produced showing the date of birth as 18/7/1927 and caste of Istari as “Mana”. Apart from this, school leaving certificate in the name of Vishwanath Maniram Nannaware, the grandfather of the petitioner contains entry “Mana” recorded on 15/7/1953. There is not even a single document on the record of the Scrutiny Committee showing caste/tribe of the petitioner other than Mana. Though in the order impugned it is stated that the petitioner has failed to establish her relation with Istari Mana, the Police Vigilance Cell report clearly shows that it is in respect of cousin great grandfather of the petitioner. The Police Vigilance Cell report states that the affinity of the family of the petitioner with Mana is established on the basis of documentary evidence. In respect of prevailing castes, traits, characteristics and customs amongst the Mana Scheduled Tribe, the Police Vigilance Cell report states that no evidence was available with it to find out as to whether the traits, characteristics and customs prevailing in the community of the petitioner relate with Mana Scheduled Tribe. The Research Officer, who is supposed

to know the traits, characteristics and customs, agrees with such report of the Police Vigilance Cell.

5. In view of the aforesaid factual background, the Committee records the finding that the petitioner has failed to establish her claim on the basis of the documentary evidence and the affinity test. According to the Committee, there are also castes like Mana appearing at serial no.268 in the list of Other Backward Class of Maharashtra, at serial no.2 in Special Backward Category and that there are also castes like Mana, Badawaik Mana, Khad Mana, Kshatriya Mana, Kunbi Mana, Ravad Mana, Mani, Mane etc. which are non-tribal. In this background, the Committee holds that the affinity test assumes significance to establish the claim for Mana Scheduled Tribe.

6. The family tree produced by the petitioner in the prescribed form before the Scrutiny Committee establishes her relationship with Istari. The Police Vigilance Cell report clearly records the finding that Istari Mana is the cousin great grandfather of the petitioner. The Committee accepts this report but records the

finding that the relationship has not been established by the petitioner with Istari Mana. There is no basis for recording such finding and we find it to be perverse.

7. The document of 1927 of birth certificate and the Kotwal Book entry in respect of male child born to Istari on 18/7/1927 assumes probative value. Apart from this entry in the school leaving certificate of the grandfather of the petitioner made on 15/7/1953 in the case indicates entry “Mana”. The petitioner has produced the caste validity certificate dated 9/11/2006 in the name of Rajiv Vishwanath Nannaware, who is real uncle of the petitioner, the validity certificate dated 6/6/2006 in the name of Subhash Nago Nannaware, who is cousin brother and the validity certificate dated 15/6/2017 in the name of Lata Sakharam Nannaware, who is paternal aunt of petitioner. The Committee should have accepted the claim of the petitioner for issuance of caste validity certificate, in view of the decision of the Division Bench of this Court in the case of Apoorva d/o Vinay Nichale...Versus...Divisional Caste Certificate Scrutiny Committee No.1 and others, reported in 2010 (6) Mh.L.J. 401.

8. In the absence of there being any evidence on record to show the caste of the petitioner or her forefathers/blood relatives other than Mana, in our view, the petitioner has established by way of documentary evidence that she belongs to “Mana”.

9. In the decision of the Apex Court in case of Anand ...Versus...Committee for Scrutiny And Verification of Tribe Claims and others, reported in 2011 (6) Mh.L.J. 919, it is held in paragraph nos.18 and 19 as under :-

“18. It is manifest from the afore-extracted 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, 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 tribes' 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.

19. *Needless to add that the burden of proving the caste claim is upon the applicant. He has to produce all the requisite documents in support of his claim. The Caste Scrutiny Committee merely performs the role of verification of the claim and therefore, can only scrutinise the documents and material produced by the applicant. In case, the material produced by the applicant does not prove his claim, the Committee cannot gather evidence on its own to prove or disprove his claim.”*

The Apex Court has in clear terms held that while dealing with documentary evidence, greater reliance may be placed on the 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. The Apex Court has held in respect of the affinity test 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 a 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 should not be the sole criteria to reject a claim.

10. In view of the aforesaid law laid down by the Apex Court and availability of the documentary evidence having probative value, we are of the view that the Committee was in error in rejecting the claim of the petitioner for Mana Scheduled Tribe by applying affinity test. So far as the rejection of the claim of the petitioner on the basis of affinity test is concerned, the Police Vigilance Cell report approved by the Research Officer of the Committee is in favour of the petitioner, as it holds that there is no

information available with the Police Vigilance Cell or even with the Research Officer to decide what traits, characteristics and customs are prevailing amongst Mana Scheduled Tribe.

11. In view of this, the Committee has committed an error in rejecting the claim on the basis of the affinity test which is not at all in existence. The Committee has taken into consideration several other aspects to which we need not make any reference, as we find those aspects to be irrelevant in the facts and circumstances of the case to reject the claim of the petitioner for Mana Scheduled Tribe. We cannot therefore sustain the order of the Committee which will have to be set aside and in our view, the petitioner is entitled to declaration that she has established her claim for Mana Scheduled Tribe.

12. In the result, this writ petition is allowed and the following order is passed.

ORDER

(i) The order dated 27/10/2017 passed by the Scheduled Tribe Certificate Scrutiny Committee, Gadchiroli, Division Nagpur is hereby quashed and set aside.

(ii) The claim of the petitioner for Mana Scheduled Tribe which is an entry at serial no.18 in the Constitution (Scheduled Tribes) Order, 1950 is held to be valid.

(iii) The Scrutiny Committee is directed to issue caste validity certificate in the name of the petitioner accordingly within a period of ten days from today.

(iv) The petitioner shall be entitled to all benefits as a candidate belonging to Mana Scheduled Tribe category and the respondents - authorities are directed to process the claim of the petitioner for admission to first year M.B.B.S. course as a candidate belonging to Scheduled Tribe category on the basis of this judgment without even waiting for the receipt of caste validity certificate from the Scrutiny Committee.

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

(Arun D. Upadhye, J.)

(R.K. Deshpande, J.)

Wadkar, P.S.