



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

WRIT PETITION NO.6983 OF 2017

Ashlesha D/o Umaji Hire,
Aged about : 18 yrs.,
Occ. Student,
R/o Nagbhid, Tah.Nagbhid,
Distt. Chandrapur.

... **PETITIONER**

V E R S U S

1. The State of Maharashtra,
Through it's Secretary,
Tribal Development Department,
Mantralaya, Mumbai-32.
2. The Joint Commissioner,
Scheduled Tribe Caste Certificate
Scrutiny Committee,
Gadchiroli Division, Gadchiroli.
3. The Directorate of Medical
Education & Research,
Mumbai.
4. The Dean,
Vasantrao Naik Government
Medical College, Yavatmal,
Distt. Yavatmal.
5. The Vice-Chancellor/Registrar,
Maharashtra University of Health
Sciences (MUHS), Mhasrul Road,
Nasik.

... **RESPONDENTS**

Ms. Preeti Rane, Advocate for petitioner.
Shri A. M. Joshi, Assistant Government Pleader for respondent
Nos.1 to 4.

CORAM:- R. K. DESHPANDE &
ARUN D. UPADHYE, JJ.
DATED : 11/06/2018.

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

1. Rule made returnable forthwith. Heard finally with the consent of the learned counsels appearing for the parties.

2. The challenge in this petition is to the order dated 27th October, 2017 passed by the Scheduled Tribe Certificate Scrutiny Committee, Gadchiroli, Division Nagpur invalidating the claim of the petitioner for Mana Scheduled Tribe Category, which is an Entry at Sr.No.18 in the Constitution (Scheduled Castes) Order, 1950. The claim of the petitioner was verified for the purposes of her admission to M.B.B.S. Course. The petitioner has cleared NEET Examination and now, she has to appear for the rounds for admission to Medical Course. Since the caste claim has been invalidated by the Scrutiny Committee, the petitioner shall not get admission, unless this petition is allowed.

3. The committee has framed and answered 7 issues as under :-

Sr. No.	Issues	Findings No.
1	Whether the claim of the present applicant is proved by way of documentary evidences ?	No
2	Whether the claim of the applicant sustain by way of affinity test ?	No
3	Whether the applicant has established that she belongs to the Mana Scheduled Tribe community listed at Sr. no.18 of part IX of the second scheduled of Act no. 108 of 1976 ?	No
4	Whether the judgment of Hon'ble Supreme Court in State of Maharashtra v/s Mana Adim Jamat Sewa Mandal (2006 (4) S.C.C. 98) supports the claim of the applicant ?	No
5	What is the difference between the Mana caste and Mana Scheduled Tribe ?	No
6	Whether the Validity Certificate issued in favour of the applicant's father precludes the committee to decide applicant's claim on merit ?	No
7	What order ?	As per final order given below.

4. From the order impugned itself, it is evident that the petitioner has produced School Leaving Certificate in the name of Anandrao Sakharam, the grand-father of the petitioner showing his caste as 'Mana' on 03/04/1951. Similarly, in the School Leaving Certificate at Sr.No.18 in the name of Govinda Rama, the cousin great grand-father of the petitioner, the Tribe is recorded as 'Mana' Tribe on 01/04/1930. There is not a single document available on record showing the caste / tribe of the petitioner, other than Mana. The documents produced on record also include

the Caste Validity Certificate issued in the name of Umaji Anandrao Hire at Sr.No.14 issued in the name of father of the petitioner validating his claim for Mana Scheduled Tribe on 31/01/2008.

5. In the aforesaid factual undisputed background, the Committee has committed an error in holding that the petitioner has failed to establish on the basis of documentary evidence produced on record, her claim for Mana Scheduled Tribe Category. In the light of decisions of Division Bench of this Court in the case of Apoorva d/o Vinay Nichale Vrs. Divisional Caste Certificate Scrutiny Committee No.1 and others, reported in 2010 (6) Mh.L.J. 401, in which it is held that if the caste claim of the father of the petitioner was validated for the Scheduled Tribe, the claim of the petitioner for such tribe could not be rejected. Apart from this, the documentary evidence produced on record having probative value clearly establish the caste claim of the petitioner for Mana Scheduled Tribe. The finding of the Committee recorded on issue of Point No.1, cannot therefore, be sustained.

6. Once the documentary evidence produced on record, having probative value, clearly establish the claim for Mana Scheduled Tribe, there is no scope for applying affinity test to reject the claim, as it would amount to letting in the evidence to exclude certain categories of Mana from the benefit of Mana Scheduled Tribe which is at Sr.No.18 in the Constitution of the order. Apart from this in the decision of the Apex Court in the case of Anand Vrs. Committee for Scrutiny and Verification of Tribe Claims and others, reported in (2012) 1 SCC 113, the affinity test is merely corroborative and the claim cannot be rejected only on the basis of it. The finding on the issue No.2, therefore, cannot be sustained.

7. In respect of other issues, we have already taken a view in the case of Narendra s/o Balaji Ghodmare Vrs. Scheduled Tribe Certificate Scrutiny Committee, Gadchiroli and another, reported in 2018 (2) Mh.L.J. 766 and in the case of Diwakar s/o Sadashiv Wakade Vrs. Scheduled Tribe Caste Certificate Scrutiny Committee, Gadchiroli and others, reported in 2018 (3) Mh.L.J. 954. In view of the law laid down in these two decisions, the findings recorded on other points also do not survive. The points are no longer res integra.

8. In the result, this writ petition is allowed. The order dated 27th October, 2017 passed by the Scheduled Tribe Certificate Scrutiny Committee, Gadchiroli, Division Nagpur is hereby quashed and set aside. The claim of the petitioner for Mana Scheduled Tribe which is an Entry at Sr.No.18 in the Constitution (Scheduled Castes) Order, 1950 is held to be valid.

9. The Committee is directed to issue Caste Validity Certificate accordingly to the petitioner, within 10 days from today.

10. The respondent - authorities are directed to process the claim for admission of the petitioner to first M.B.B.S. Course on the basis of decisions of this Court without waiting issuance of Caste Validity Certificate by the said Committee.

11. Rule is made absolute in the aforesaid terms accordingly. No costs.

(Arun D. Upadhye, J.)

(R.K. Deshpande, J.)

Choulwar