

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

WRIT PETITION NO.2784/2018

Tejas S/o Keshav Barekar,
aged about 17 Yrs., Occu. Student,
through natural guardian father
Keshav Gopal Barekar,
aged about _ Yrs., Occu. Service,
R/o Azad Chowk, Tukum,
Distt. Chandrapur.

..Petitioner.

..Vs..

The Vice-Chairman,
Scheduled Tribe Caste Certificate
Scrutiny Committee, Gadchiroli.

..Respondent.

Ms. P.D. Rane, Advocate for the petitioner.

Mr. A.S. Fulzele, Additional Government Pleader for the respondent.

CORAM : B.P. DHARMADHIKARI AND Z.A.HAQ, JJ.
DATED : 8.6.2018.

ORAL JUDGMENT (Per B.P. Dharmadhikari, J.)

1. Considering the nature of controversy and urgency, matter is heard finally by issuing **Rule** and making it returnable forthwith.

2. Advocate Ms. Rane submits that validity given to father of petitioner by very same Committee on 6.6.2006 has been discarded without recording any legal reasons. The Committee has ignored the Vigilance Cell observation in case of father that the affinity was not satisfied but still validity was given to

him. This exercise could not have been brushed aside lightly. There is similar observation even in case of a vigilance report obtained in the matter of petitioner but then validity given to father should have been accepted as binding. She adds, that all documents even old documents of pre-independence era record cast as *Mana* and the documents are found genuine. There is not a single entry showing any interpolation or mentioning another caste or tribe. In this situation, merely because of alleged similarity in the names of caste / tribes the documents could not have been discarded.

3. Learned A.G.P. has taken us through impugned order. He submits that Kshatriya Badwaik, Maratha Mana or Kunbi Mana also exist and hence mention of caste as Mana in old documents is not determinative. The caste will be recorded as Mana even in these cases and hence affinity test was felt necessary. Affinity test conclusively established that petitioner does not belong to Mana Schedule Tribe.

4. We find that consideration of present controversy is eclipsed by validity given to Keshav Gopala Barekar i.e. father of petitioner on 6.6.2006. This validity is after vigilance enquiry and, therefore, with due application of mind by Scrutiny Committee. Vigilance enquiry was conducted on 23.3.2005 and the vigilance report was submitted by Vigilance Officer to Research Officer. Research Officer has on 31.3.2005 made an endorsement that though

during enquiry records reveal caste as Mana but then customs and trades do not show social status as Schedule Tribe. This has been thereafter looked into by Scrutiny Committee which on 6.6.2006 issued validity in favour of father of petitioner.

5. In case of present petitioner in impugned order dated 13.4.2018 some documents have been looked into while recording answer to point No.1. In paragraph A documents at Serial No.1, 2, 6, 7, 10 and 11 find mention. Committee also records that in all these documents from 1952 to 2016 caste is recorded as Mana. But then it also expresses that this mention of Mana cannot be accepted as indicative Mana Schedule Tribe only. In sub-paragraph thereafter it mentions the problems arising on account of similar names of Tribe and caste. It has not, however, pointed out caste or tribe with similar name or to which reference has been made by learned A.G.P. Synonymous caste does not figure in the impugned order.

6. Not only this, in vigilance enquiry or then while recording finding on affinity test the Committee has not come across any material to show that petitioner may belong to Mana caste / community which is upper caste and, therefore, does not belong to Mana Schedule Tribe. There is no such entry in any document to indicate that petitioner belongs to Maratha Mana, Kunbi Mana or Kshatriya Badwaik Mana. Even while appreciating traits, customs

prevalent in the family, Committee has not recorded that same show that petitioner belongs to these upper caste categories.

7. In the absence of such a finding, the validity given to father could not have been discarded. Looking to very same material the earlier Committee has granted validity to father. Present Committee therefore, ought to have come across some other evidence to enable it to reach different view of the matter. It could not have taken a different view on very same material.

8. Impugned order is, therefore, unsustainable. It is quashed and set aside.

9. We direct the respondent Committee to issue validity to petitioner as Mana Schedule Tribe forthwith.

10. Rule made absolute accordingly. No costs.

JUDGE

JUDGE

Tambaskar.