



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

...

WRIT PETITION NO. 5779 OF 2022

Ku. Aditi D/o Vikas Swami
Aged 17 years, occu: student
(minor) Through her Legal Guardian Father
Shri Vikas Vinay Swami
Aged about 50 years,
R/o Type-D/24/02, KTPS Colony
Koradi, Tq.Kamptee Dist. Nagpur.

..PETITIONER

versus

1) The State of Maharashtra
Through its Principal Secretary
Tribal Development Department
Mantralaya, Mumbai 32.

2) The Scheduled Tribe Certificate
Scrutiny Committee, Amravati Division
Amravati :Through its Deputy Diretor and
Mamber Secretary, having office at
Frezerpura, Amravati.

..RESPONDENTS

.....
Mr. F.T. Mirza with Mr. A.I. Sheikh, Advocates for petitioner
Mr. N.S.Rao, AGP for respondents
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**CORAM: SUNIL B. SHUKRE &
ANIL L. PANSARE, JJ
DATED : 12th October, 2022.**

JUDGMENT: (PER ANIL L. PANSARE, J.)

1. **Rule.** Rule made returnable forthwith. Heard finally with consent of parties.

2. The petitioner has sought the following substantial relief(s) :-

(A) Quash and set aside the impugned order dated 12.09.2022 passed by the respondent No.2 - The Scheduled Tribe Certificate Scrutiny Committee, Amravati Division, Amravati (Annexure-E) being it illegal;

(B) Hold and declare that the petitioner belongs to "Mannewar" Scheduled Tribe notified at Sr.No.18 in the Constitution (Scheduled Tribes) Order 1950 and direct the respondent no.2 - the Scheduled Tribe Certificate Scrutiny Committee, Amravati Division, Amravati to issue petitioner validity certificate within a stipulated period."

3. The petitioner claims to belong to "Mannewar" Scheduled Tribe. Our attention has been drawn to the impugned order dated 12th September, 2022 passed by Respondent no.2-scrutiny Committee, invalidating her tribe claim. The petitioner has filed eleven documents in support of her tribe claim. Out of eleven documents, the documents at Sr. Nos. 7 to 11 are said to be pre-Constitutional documents. These

documents have been ignored by the Respondent no.2-Committee, on the ground that the vigilance cell has reported that these documents were either torn or burnt.

4. Mr. F.T. Mirza, learned counsel for the petitioner submits that the petitioner cannot be blamed for such state of affairs. Nonetheless, he argued that existence of pre-Constitutional documents has not really been disputed by the Committee and the Committee has only opined that the documents cannot be considered for non-availability of the original record, as reported by the Vigilance Cell. He further submits that some of these documents were available and ought to have been considered by the Committee, being pre-Constitutional documents. However, the Committee has relied upon post-Constitutional documents of the relatives of the petitioner. The caste of the father of petitioner is mentioned as 'Kshatriya'; the caste of paternal aunt of the petitioner as 'Rajput'; whereas the caste of another paternal aunt is mentioned as 'Kshtriya'. Such approach, according to Mr. Mirza, requires reconsideration.

5. Mr. N.S.Rao, learned AGP would submit that though the pre-Constitutional documents indicate that the caste of some of the relatives is 'Mannewar', two documents out of five indicate that the caste of the paternal aunt of grandfather is 'Te.Mannewar' and caste of grandfather is 'Hindu Telugu Mannewar'. Such being the status, the learned AGP submits that the Committee has rightly taken the aid of post-Constitutional documents and has further ascertained the social status of the petitioner on the basis of affinity test, to invalidate the claim of the petitioner.

6. We have carefully gone through the impugned order, so also the documents placed before us. The oldest document is document no.7, which is a school leaving certificate of great grandfather of the petitioner. The date of the document is said to be 18th July 1916 and the caste is mentioned as 'Mannewar.' This document, according to the vigilance cell, could not be verified as the record for the relevant period had been gutted in fire. The second document pertains to the grandfather of the

petitioner. It shows the date of birth of the grandfather as 10th July, 1943 and the name is written as Vinaykumar Sitaram Mannewar. This document has been ignored by the Committee on the count that the document could not be verified because the original record is torn. The next document is death certificate of the grandmother of the petitioner, recording the date of death as 22nd December, 1945. The caste is mentioned as 'Mannewar'. The extract of register of birth and death of the Municipal Corporation, Amravati was available for verification. The date of death is indeed mentioned as 22nd December, 1945 and the caste as 'Mannewar'. This document has been ignored without assigning any reason whatsoever. The next document pertains to paternal aunt of the grandfather, namely, Sivna Balanna. The date of death in the birth and death register is mentioned as 21st March 1945 and the caste as 'Te.Mannewar'. The other document pertains to grandfather of the petitioner. It refers to the service book wherein the date of birth is mentioned as 10th July 1943 and the caste as 'Hindu Telugu Mannewar'. These two documents have been left out by the Committee on the count that these documents though are pre-

Constitutional documents, the caste has been mentioned as 'Te.Mannerwar' and 'Hindu Telugu Mannewar'.

7. We find this approach of the Committee to be pedantic and erroneous. There was at least one document i.e. the death certificate of grandmother of the petitioner showing date of death as 22nd December, 1945 and the caste as 'Mannewar'. The original record was in existence for verification. There is absolutely no reason assigned by the Committee to ignore this valid document. So far as the documents belonging to the grandfather and paternal aunt of the grandfather which refers the caste as 'Te.Mannewar' and 'Hindu Telugu Mannerwar', we are of the considered view that even the said documents could not have been ignored by the Committee.

8. The Division Bench of this Court, in the case of Suresh Kumar Naidu vs. State of Maharashtra and another reported in 2019 Vol.5 MhL.J 572, while considering similar such issue, held that the prefix 'Telugu' to Mannewar in the

entry merely indicates the language and not the caste. The document has to be considered as indicating the tribe claim of 'Mannewar'.

9. Thus, the two documents showing caste as 'Te.Mannewar' and 'Hindu Telugu Mannewar' ought to have been considered by the Committee as showing the social status of the paternal relatives of the petitioner as belonging to 'Mannewar'. The prefix 'Telugu' and 'Hindu Telugu' only indicates the language and not the caste/tribe. These documents being pre-Constitutional documents have a greater probative value than the post-constitutional documents and the affinity test.

10. The Hon'ble Supreme Court, in the case of Anand vs. Committee for Scrutiny and Verification of Tribe Claims and others, reported in (2012) 1 SCC 113, held that while dealing with the documentary evidence, greater reliance may be placed in pre-independence documents because they furnish a higher degree of probative value to the declaration of status of a caste

compared to post-independence documents. In respect of the affinity test, the Apex Court has observed that a cautious approach has to be adopted. With the migration, modernization and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match the traditional characteristics of the tribe. It is then held that the affinity test may not be recorded as a litmus test for establishing the applicant's link with the Scheduled Tribe. 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. The ruling, in our view, covers the petitioner's case.

11. Resultantly, we hold that the Respondent No.2-Committee has committed an error in rejecting the petitioner's claim as belonging to 'Mannewar' Scheduled Tribe. We, therefore, proceed to pass the following order :-

ORDER

- (i) Writ Petition No. 5779/2022 is allowed.
- (ii) The impugned order dated 12th September, 2022 passed by respondent no.2-Scrutiny Committee, Amravati, is hereby

quashed and set aside.

(iii) We direct the respondent no.2-Scrutiny Committee to issue validity certificate to the petitioner that the petitioner belongs to 'Mannewar' Scheduled Tribe, within a period of three weeks from the date of the order.

10. Rule is made absolute in the above terms. No costs.

11. Steno copy of the operative order be furnished to the learned counsel for the petitioner, immediately.

JUDGE

JUDGE

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