



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

WRIT PETITION NO. 2911 OF 2018.

Hirkanya d/o Lalaji Sawsakade,
Aged about 23 years, Occupation-
Nil, Resident of Bormala, Tahsil
Sakoli, District Chandrapur.

... **PETITIONER.**

VERSUS

1. The Vice Chairman/Member – Secretary
Scheduled Tribe Caste Certificate
Scrutiny Committee, Gadchiroli.
2. The State of Maharashtra
through its Secretary,
Department of Tribal Development,
Mantralaya, Mumbai – 32.
3. The Principal Secretary (Forest)
Revenue and Forest Department,
Mantralaya, Mumbai – 32.
4. The Principal Chief Conservator
(M.S.), Van Bhavan, Ramgiri
Road, Civil Lines, Nagpur.
5. The Chief Conservator (Territory),
Chandrapur.
6. The Divisional Forest Officer,
Chandrapur Forest Division,
Chandrapur.

... **RESPONDENTS.**

Ms. P.D. Rane, Advocate for the Petitioner.
Shri N.R. Patil, A.G.P. for Respondents.

**CORAM : R.K. DESHPANDE &
VINAY JOSHI, JJ.**

DATE : NOVEMBER 27, 2018

ORAL JUDGMENT (Per - Vinay Joshi, J.) :

Heard Ms. P.D. Rane, learned Counsel for the petitioner and Shri N.R. Patil, learned Assistant Government Pleader for respondents. By their consent and considering the controversy involved in the matter, Writ Petition is taken up for final disposal. Hence, Rule is made returnable forthwith.

2. The challenge in the present Writ Petition is to the order dated 13.04.2018, passed by the Committee for Scrutiny and Verification of Tribe Claims, Gadchiroli, invalidating the caste claim of the petitioner as belonging to “Mana” Scheduled Tribe, which is an entry at Sr. No.18 of the Constitution Scheduled Tribes Order, 1950. By the said order, the caste certificate issued by the Sub Divisional Magistrate, Mul on 19.12.2016, is cancelled.

2. Pursuant to an advertisement issued by respondent nos.2 to 6 for the post of “Forest Guard”, the petitioner being

qualified for the same, applied from Scheduled Tribe category. The petitioner was accordingly selected by respondent nos. 2 to 6 for the said post of Forest Guard from Scheduled Tribe category.

3. After her selection, petitioner submitted a proposal along with necessary documents to respondent Employer, for the purpose of scrutiny and verification of her caste claim. The same came to be forwarded by her Employer to the Scrutiny Committee on 24.03.2017. The petitioner has annexed several documents in support of her caste claim.

4. The Scrutiny Committee has obtained police vigilance cell report; gone through the documents, and after considering the entire material, invalidated caste claim of the petitioner vide its impugned order.

5. The caste claim of petitioner came to be turned down on the ground of documents, area restrictions and affinity. The Committee in its order referred 16 documents which were tendered by the petitioner in support of her caste claim. While scrutinizing the said documents at Sr. Nos. 3, 4, 5, 8 and 13, the respondent Committee expressed that those documents are of the period between 1948 to 2012, having reference to Mana Caste. However,

there is no specific reference about Scheduled Tribe. Moreover, the Committee by referring to various precedents, finally concluded that merely on the basis of documents, caste claim cannot be decided, by holding that the petitioner failed in the affinity test, and invalidated her caste claim.

6. The learned Counsel appearing on behalf of the petitioner submitted that the Committee erred in invalidating the caste claim. Though the petitioner has produced pre-independence documents having high probative value, they were not considered. It is argued, that the Committee has not considered each and every aspect of the report submitted by police vigilance cell, as well as the documents supporting the case of petitioner.

7. Our attention is invited to a document i.e. School Leaving Certificate of great grand father of petitioner namely – Dhondu Bhika dated 14.06.2010, wherein on 01.02.1948, the caste has been recorded as “Mana”. The petitioner has also relied upon an extract of P-1, showing reference to Mana caste entered in the year 1921-22 in respect of her great grand father. While dealing with the documentary evidence, greater reliance must be placed to these pre-independence documents, which are having high probative value. Besides this, the petitioner has invited our

attention towards a Certificate of Validity issued to her cousin brother namely Gurudeo Moreshwar Sawsakhede on 02.11.2007. Certainly the same has to be taken into consideration.

8. The police vigilance cell report shows that there are similarities in the information given by the relatives of the petitioner. No doubt, the nature of enquiry in regard to claim of a candidate belonging to Scheduled Tribe is not confined to examination of documents, but, would involve other tests also. Though the petitioner has produced old documents prior to 1950, those were not considered by the Committee. Genuineness of the claim has to be always verified on the basis of entire material, including information, documents and evidence. An enquiry into kinship and affinity is not a decisive factor. The various documents, particularly the old one, consistently show that caste of petitioners forefathers was recorded as Mana.

9. In view of the decision of the Hon'ble Apex Court in case of Anand .vrs. Committee for Scrutiny and Verification of Tribe Claims and others ((2002) 1 SCC 113) wherein it is held that affinity test may not be regarded as a litmus test for establishing the link of the applicant with the Scheduled Tribe. Thus, affinity test may be used to corroborate the documentary

evidence and should not be the sole criteria to reject the claim. [b] Moreover, it is nobodies case that the pre-constitution documents brought by the petitioner are either fraudulent or fabricated one. They cannot be brushed aside on the premise of affinity test.

When the documents bearing high probative value clearly establish the caste of the petitioners' forefathers as Mana, in our view, there is no option but, to validate the claim of the petitioner.

10. In view of above, Writ Petition is allowed and following order is passed.

- (i) The order dated 13.04.2018, passed by the Scheduled Tribe Caste Certificate Scrutiny Committee, Gadchiroli, is hereby quashed and set aside.
- (ii) It is declared that the caste certificate dated 19.12.2016, produced by the petitioner is valid and the Committee is accordingly directed to issue a Certificate of Validity in favour of the petitioner showing her as belonging to "Mana – Scheduled Tribe", which is an entry at Sr. No.18 in the

Constitution Scheduled Tribes Order, 1950.

(iii) The validity certificate be issued within a period of six weeks from the date of receipt of this judgment.

(iv) The petitioner would be entitled to all other benefits of Scheduled Tribe.

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

JUDGE

JUDGE

Rgd.