

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

**Writ Petition No. 5977/2018**

**PETITIONER:-**

Vishal s/o Rameshwar Nannaware,  
Aged about 21 years, Occ. Student,  
R/o At-post – Amboli, Tah. Chimur,  
Dist. Chandrapur.

**VERSUS**

**RESPONDENTS:**

1. The Vice-Chairman/Member-Secretary,  
Scheduled Tribe Caste Certificate  
Scrutiny Committee, Gadchiroli.
2. The Principal,  
All India Shri Shivaji Memorial Society's  
Institute of Information Technology,  
Pune.
3. The Vice-Chancellor/Registrar,  
Savitribai Fule Pune University, Pune,
4. The State Common Entrance Test Cell,  
Maharashtra State, Mumbai, through its  
Commissioner, having his office at 8<sup>th</sup>  
Floor, near Excelsior Building, A. K. Naik  
Marg, Fort, Mumbai – 400 001.

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

Shri N. R. Patil, Assistant Government Pleader respondent No.1.

Shri S. K. Chaware, Advocate for respondent No. 2

Shri N. S. Khubalkar, Advocate for respondent No. 4  
-----

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

**DATE OF JUDGMENT :- 12.12.2018**

**JUDGMENT (PER R. K. DESHPANDE, J.)**

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

2. The challenge in this petition is to the order dated 21.08.2018 passed by the respondent No.1 – Scheduled Tribe Caste Certificate Scrutiny Committee, Gadchiroli invalidating the claim of the petitioner for “Mana” Scheduled Tribe which is an entry at Sr. No. 18 in the Constitutional (Scheduled Tribes) Order, 1950. The invalidation is only on the basis of the affinity test.

3. Before the Committee, the petitioner produced sixteen documents in support of his claim for “Mana” Scheduled Tribe. All the documents indicate the caste of the petitioner, his forefather and blood relatives as “Mana”. Two validity certificates one dated 23.11.2010 issued in the name of Rameshwar Kisan Nannaware – father of the petitioner and another dated 04.08.2016 issued in the name of Dewachand Tulshiram Nannaware – the real uncle of the petitioner were also produced. The oldest documents produced on record and obtained by the Police Vigilance Cell is of 1920-23 which is P-1 registered in the name of Dago Wald Diwana – great great grandfather.

The another document is of 1950 – 51 which is the account of Panchayat Fund Expenses mentioned the caste of the great grand-father as “Mana”. The document is in the name of Chirkut Nannaware – the great grand-father of the petitioner recording entry in the year 1954 -55 as “Mana” in the record of rights. In the light of all these documents on record having probative value, the Committee could not have invalidated the claim of the petitioner for “Mana” Scheduled Tribe, particularly in view of the decision of this Court in case of *Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 and others*, reported in **2010(6) Mh.L.J. 401**.

4. What the Committee has done is to lead the evidence by way of affinity test to hold that though the entries in the documents are of “Mana”, it is not a “Tribe”. Such evidence is impermissible in law to exclude certain categories of “Mana” from the entry in the Scheduled Tribe order, which is required to be read as it is. In view of the decision of the Apex Court in the case of *Anand Vs. Committee for Scrutiny and Verification of Tribe Claims*, reported in **2011(6) Mh.L.J. (S.C.) 919**, the affinity test is not a litmus test and cannot prevail over the documents. It is to be used as a corroborative test. The claim of the petitioner could not have been rejected on the basis of such affinity test.

5. The petitioner was admitted in the 2<sup>nd</sup> year of Engineering course in the respondent No. 2 – College during academic session 2018-2019. The date of admission is 18.08.2018. According to the instructions provided, the petitioner was required to produce caste validity certificate on or before 30.08.2018. It is prior to this date, the order of invalidating caste claim of the petitioner was passed on 21.08.2018, the copy of which was forwarded to the petitioner on 09.09.2018. On 08.09.2018, the admission of the petitioner was cancelled but by virtue of interim order passed by this Court dated 12.09.2018, the admission of the petitioner is protected. Thus, the petitioner is undertaking Engineering course by virtue of interim order passed by this Court.

6. Shri Khubalkar, the learned counsel appearing for the respondent No. 4 invited our attention to the Maharashtra Ordinance No. XVII of 2018 introducing the provisions of Section 4A under the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of issuance and Verification of) Caste Certificate Act, 2000 (herein after referred to as the “Act of 2000”). It is urged by him that in terms of Sub-section (3) of Section 4A of the Act of 2000 introduced the provisional admission granted to the petitioner on 18.08.2018 stood aromatically cancelled against the reserved seat. He

therefore, submits that the petitioner is not entitled to continue Engineering course, even if this Court validates the claim of the petitioner.

7. In the decision of this Court in ***Civil Application (W) No. 2029/2018 In Writ Petition No. 5171/2018 in case of Mrunali Shamrao Wakade Vs. Vice Chairman Scheduled Tribe Scrutiny Committee, Gadchiroli & ors. and other connected matters*** delivered on 24.08.2018, the effect for introduction of provision of Section 4A of the Act of 2000 was considered. It is held by the Division Bench that the said provision does not come in the way of this Court in granting protection to the admission of the petitioner. Apart from this, Sub-section (4) of Section 4A of the Act of 2000 states that nothing in Sub-section (3) shall be construed as preventing the relevant authority for considering such person eligible for admission to the professional course from the open category in accordance with law for the time being in force. We have not been pointed out as to whether such consideration was done by the relevant authority or not. The reading of this provision itself makes it clear that the petitioner cannot be thrown out but he has to be adjusted against the Open Category in accordance with law. Before such exercise could be carried out, the protection was granted by this Court. Therefore, in view of the provision of Sub-section(3) of

Section 4A of the the Act of 2000 would not come in the way of the petitioner for continuing in course against seat reserved for Scheduled Tribe.

8. In view of the above, this Writ petition is allowed. The order dated 21.08.2018 passed by the respondent No. 1 – Scrutiny Committee, Gadchiroli is hereby quashed and set aside. It is declared that the petitioner has established his caste claim for “Mana” Scheduled Tribe which is an entry at Sr. No. 18 in the Constitutional (Scheduled Tribes) Order, 1950 and accordingly we direct the Committee to issue caste validity certificate to the petitioner within a period of one month from today. In view of this declaration, the question of disturbing the admission of the petitioner to the Engineering course does not at all arise and the respondents shall not cancel the admission of the petitioner on the ground of validity certificate is not received from the Committee.

9. Rule is made absolute in view of the above terms.

**JUDGE**

**JUDGE**

Gohane