



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

WRIT PETITION NO. 5087 OF 2022

Baban S/o Shamrao Laswante, Aged about 52 years, Occu.: Service, R/o. 402, Kaveri, BSNL Officers Residential Complex, JB Nagar, Near Goel Hospital Andheri (East), Mumbai-59. **Petitioner**

-Versus-

1. Scheduled Tribe Caste Certificate Scrutiny Committee, Irwin Chowk, Amravati, Through its Research Officer and Member Secretary. **Respondents**
2. Bharat Sanchar Nigam Limited, (BSNL) through its General Manager, Office at 1st Floor, 'D Wing', BSNL Administrative Building, Juhu Tara Road, Santacruz, (West) Mumbai-54.

Mr. T. U. Tathod, counsel for the petitioner.
Mr.M.K.Pathan, AGP for respondent No.1.
Mr. Amol Deshpande, counsel for respondent No.2.

**CORAM : ROHIT B. DEO AND
M.W.CHANDWANI, JJ.**

DATE : 26TH JUNE, 2023

JUDGMENT (Per : M. W. Chandwani, J.)

Heard.

2. **Rule.** Rule made returnable forthwith. The petition is heard finally with the consent of the learned counsel appearing for the respective parties.

3. The petition challenges the order dated 15/07/2022 of respondent No.1-Scheduled Tribe Caste Scrutiny Committee Amravati (hereinafter referred to as 'Committee'), whereby the caste claim of the petitioner was invalidated.

4. The petitioner claims that he belongs to Gond Gowari tribe, which is recognized as scheduled tribe category. He joined the services of respondent No.2 as a Junior Telecom Officer at Mumbai on the reserved post for scheduled tribe. He was promoted and is presently working as Assistant General Manager with respondent No.2. On 21/02/2019, the petitioner submitted proposal for verification of his tribe claim with the respondent No.1-Committee. The petitioner submitted various documents on record and he relied also on the caste validity certificate issued to her daughter before the Committee. After receipt of the vigilance

cell report, the Committee heard the petitioner and by the impugned order dated 15/07/2022, invalidated the caste claim of the petitioner. Being aggrieved by the order dated 15/07/2022 passed by the Committee, the petitioner filed the present petition.

5. Heard the learned counsel for the petitioner as well as the learned Assistant Government Pleader for the Committee and the learned counsel for the respondent No.2. Perused the record of case No.सआ/अजप्रतस/अम/5/503/Ser/022019/117126 and the impugned order.

6. It is submitted on behalf of the learned counsel for the petitioner that the observations made by the Committee are perverse. The tribe 'Gond Gowari' is amalgamation of 'Gond' and 'Gowari'. Gowari is considered as a sub-caste of 'Gond-Gowari'. The petitioner has submitted various documents having entry of 'Gowari' and 'Gond-Gowari'. He also submitted caste validity certificate issued in favour of the daughter of the petitioner. The same have not been considered by the Committee. It is contended that the Committee relied on the decision of the Supreme Court in the case of **State of Maharashtra v. Keshao Vishwanath Sonone**, reported in (2021) 13 SCC 336 and invalidated the caste claim of

the petitioner. According to the learned counsel for the petitioner, the review petition of the decision in the case of ***Keshao Vishwanath Sonone*** (*supra*) is pending before the Supreme Court and therefore, the Committee ought not to have invalidated the caste claim of the petitioner. Lastly, it is submitted that when the Committee, after completing all the formalities, has already issued the validity to the caste certificate of his daughter, the Committee should not have invalidated the caste claim of the petitioner. According to him, the impugned order is not correct and liable to be set aside.

7. Learned Assistant Government Pleader Mr. M.K.Pathan for the Committee submits that the caste validity certificate, which was granted to the daughter of the petitioner, was on the basis of the earlier decisions of this Court, which were carried to the Supreme Court and ultimately, the Supreme Court in the case of ***Keshao Vishwanath Sonone*** (*supra*) has given weightage to the affinity test in the cases of 'Gond Gowari' in cases where the pre-independent documents are inconsistent in referring the caste. According to him, in the wake of the decision of the Supreme Court, the position is changed, therefore, he cannot be given

benefit of the caste validity certificate of his daughter, which was given on the basis of decisions of this Court, which were ultimately, reversed. He further submitted that the Committee rightly relied on the decision of the Supreme Court in ***Keshao Vishwanath Sonone*** (*supra*) and invalidated the caste claim of the petitioner. He sought for dismissal of the petition.

8. The present controversy is squarely covered by the decision in ***Keshao Vishwanath Sonone*** (*supra*) wherein the Supreme Court has also taken a view that no caste or tribe could be added or deleted from the Scheduled Tribe Order, 1950 and that no evidence can be taken by the High Court for making a declaration that a particular caste or tribe is included in Scheduled Tribe Order, 1950. Therefore, it is necessary to extract the relevant paras of the said decision, which read as under –

“101. Shri Rohtagi submits that it has been held by this Court that with regard to entries of Scheduled Tribes in Entry 18, all entries be treated to be separate caste and it is not necessary to prove any affinity with “Gond”. He submits that in Entry 18, the word “including” was deleted by Scheduled Castes and Scheduled Tribes Order Amendment Act, 1976, the effect of which was that all entries of caste in Entry 18 became independent to “Gond” and no affinity is to be

proved by any community from “Gond”. He submits that “Gowari” to claim the benefit of the Scheduled Tribe need not prove any affinity with “Gond”. He submits that the High Court has rightly undertaken the exercise to ignore a non-existent tribe and to extend the benefit of the Scheduled Tribe.

102. Shri Rohtagi has placed reliance on judgment of this Court in *State of Maharashtra v. Mana Adim Jamat Mandal*¹⁷. In the above case, two questions were raised which have been noticed in the para 1 of the judgment which is to the following effect: (SCC p. 100)

“1. What appears to be a perpetual controversy with regard to the Scheduled Tribe status has again engaged the attention of this Court for a considerable time. Two questions are raised before us:

1. Whether the “Mana” community in the State of Maharashtra is a sub-tribe of “Gond” and is a Scheduled Tribe or not?

2. Whether a two-Judge Bench decision of this Court in *Dina v. Narayan Singh*¹¹ (for the sake of brevity “*Dina (1)*” and the decision rendered by another two-Judge Bench of this Court in *Dadaji v. Sukhdeobabu*¹⁸ [for the sake of brevity “*Dina (2)*”] are overruled by a Constitution Bench of this Court in *State of Maharashtra v. Milind*²?”

17 (2006) 4 SCC 98

11 38 ELR 212 (SC)

18 (1980) 1 SCC 621

2 (2001) 1 SCC 4 : 2001 SCC (L&S) 117

103. The caste ‘Mana’ was also one of the castes which was included in the Entry 18. By the Government Resolution dated 24-04-1985, it was directed that “Mana” community be not treated as Scheduled Tribe unless they establish relationship or affinity with “Gond” which Government Resolution was also under challenge in the above case.

104. This Court in the above judgment in *Mana Adim Jamat Mandal*¹⁷ noticed the deletion of word “including” in Entry 18 and came to the conclusion that Mana is not a sub-tribe of ‘Gond’. Following was laid down in paragraph 30: (SCC p.108)

“30. The common pattern found in most of the group entries is that there is a punctuation mark comma (,) between one entry and another entry in the group signifying that each one of them is deemed to be a separate Scheduled Tribe by itself. In the present case, Entry 18 of the Schedule clearly signifies that each of the tribes mentioned therein is deemed to be a separate tribe by itself and not a sub-tribe of “Gond”. “Gond” is a Scheduled Tribe, it is not disputed. As already noticed that “Gond” including Arakh or Arrakh, etc. found in Entry 12 of the Amendment Act 63 of 1956 has been done away with by the Amendment Act of 1976. In Entry 18 of the Second Schedule of the Amendment Act of 1976 the word “including” was deliberately omitted, which signifies that each one of the tribes specified in Entry 18 is deemed to be a separate tribe by itself. Therefore, “Mana” is not a sub-tribe of “Gond” but a separate tribe by itself and is a Schedule Tribe.”

105. What was laid down by this Court in *Mana Adim Jamat Mandal*¹⁷ with regard to “Mana” which was also a tribe included in Entry 18 is not applicable with

¹⁷ (2006) 4 SCC 98

regard to Entry “Gond Gowari”. With the “Gowari” word “Gond” is prefixed. The expression “Gond Gowari” clearly expresses that the community “Gond Gowari” has to do with tribe “Gond”. The community “Mana” has no such indication and insofar as “Gond Gowari” is concerned we are clear in our view that “Gond Gowari” is a community which has affinity with “Gond” and is sub-tribe of “Gond”. The entry of “Gond Gowari” in Scheduled Tribes Order 1950 was as a sub-tribe of “Gond” which is clear from a report of the Backward Classes Commission, 1955. When the inclusion of the entry “Gond Gowari” was as (sub-tribe of Gond), its affinity with “Gond” cannot be ignored on any basis.

106. The judgment of this Court in *State of Maharashtra v. Mana Adim Jamat Mandal*¹⁷, cannot be read as an authority to hold that “Gond Gowari” has no affinity with “Gond”. The judgment of this Court in *State of Maharashtra v. Mana Adim Jamat Mandal*¹⁷ is solely based on deletion of word “including” in Entry 18. For the purpose of this case, we need not delve any further as to what is the intendment of Parliament in deleting the word “including” and by deletion of word “including”, all tribes included in common group i.e. Entry 18 shall be treated separate and has nothing to do with “Gond”.

107. We entertain our own doubts about the correctness of the ratio of judgment in the *State of Maharashtra v. Mana Adim Jamat Mandal*¹⁷ with regard to a group entry. As per Article 342(1), tribes or tribal communities or parts or groups within tribes or tribal

¹⁷ State of Maharashtra v. Mana Adim Jamat Mandal, (2006) 4 SCC 98

communities shall for the purposes of the Constitution be deemed to be Scheduled Tribes. There has to be some purposes for joining number of tribes together in one entry, but as observed above in case with regard to “Gond Gowari” the affinity is more than apparent with “Gond” and the judgment of this Court in *State of Maharashtra v. Mana Adim Jamat Mandal*¹⁷ cannot be read as an authority to hold that “Gond Gowari” is not a sub-tribe of “Gond” and no affinity is required to be established with Gond by the tribe “Gond Gowari”. We thus do not find any infirmity in Government Resolution dated 24-04-2984 insofar as Scheduled Tribe “Gond Gowari” is concerned.

108. In view of the foregoing discussion we answer Questions No.5 and 6 in the following manner:

Answer 5

109. The caste “Gowari” is not the same as “Gond Gowari”. The High Court could not have granted declaration of caste “Gowari” as “Gond Gowari”.

Answer 6

110. The High Court is not correct in its view that “Gond Gowari” shown as Item 28 in Entry 18 of Scheduled Tribes Order, 1950, is not a sub-tribe of “Gond”. The validity of caste certificate to “Gond Gowari” has to be tested on the basis of affinity test as specified in the Government Resolution dated 24-4-1985.”

¹⁷ State of Maharashtra v. Mana Adim Jamat Mandal, (2006) 4 SCC 98

9. Thus, by the decision of the Hon'ble Supreme Court, the decision of this Court in the case of *Writ Petition No.4023 of 2009 (Adim Gowari Samaj Vikas Mandal)*, *Writ Petition No.1680 of 2012 (Adiwasi Gond Gowari (Gowari) Seva Mandal)*, *Writ Petition No.4779 of 2008 (Adivasi Gond Govari (Gowari) Sewa Mandal)* and *Writ Petition No.1742 of 2007 (Keshav Vishwanath Sonone)* have been reversed. In the wake of the decision of the Hon'ble Supreme Court cited supra, now it is also crystallized that the caste "Gowari" is not the same as "Gond Gowari" and the validity of caste certificate to "Gond Gowari" has to be tested on the basis of affinity test as specified in the Government Resolution dated 24-4-1985.

10. Notably, the caste validity certificate granted by the Committee to the daughter of the petitioner was in the wake of the earlier decisions of this Court, which were reversed by the decision of the Supreme Court in ***Keshao Vishwanath Sonone*** (*supra*). The petitioner cannot claim his caste validity on the validity certificate issued to his daughter prior to the decision in ***Keshao Vishwanath Sonone*** (*supra*). Therefore, we do not find force in the argument of the learned counsel for the petitioner.

11. Pendency of the review petition in the case of *Keshao Vishwanath Sonone* (supra) is also not a ground to set aside the impugned order of the Committee, because nothing has been brought on record that any interim order in the review petition has been passed. Insofar as the ground of not conducting vigilance enquiry in the case of the petitioner and relying on the vigilance report of the case of her daughter by the Committee is concerned, the petitioner cannot blow hot and cold at the same time, as he is relying on the caste validity certificate of her daughter and at the same time disowned the vigilance enquiry conducted in the case of his daughter.

12. Be that as it may, but the fact remains that the vigilance enquiry was conducted in the case of his daughter rather, the petitioner himself was interrogated in the said enquiry. The affinity test conducted in the case of his daughter is very well applicable to the case of the petitioner, being father. Therefore, we do not find force in the submission of the learned counsel for the petitioner. The impugned order dated 15/07/2022 does not suffer from any illegality. The respondent No.1-Committee has rightly considered the facts and rightly applied the decision in *Keshao Vishwanath*

Sonone (*supra*) while invalidating the caste claim of the petitioner. Therefore, the impugned order passed by the Committee does not require any interference. The petition fails and the same is dismissed.

13. The interim order dated 23/08/2022 passed by this Court shall continue to operate for the next six weeks to enable the petitioner to approach the Hon'ble Supreme Court.

14. Rule stands discharged. No costs.

(M.W.CHANDWANI, J)

(ROHIT B. DEO, J)