



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

WRIT PETITION NO. 6341/2022

Khushali D/o Devidas Lade, Aged about 24 years,
Occu. Student, R/o At Post, Jhanjhadpura,
Navivasti, Badnera, Dist. Amravati.

PETITIONER

.....VERSUS.....

1. State of Maharashtra, Through its Secretary,
Tribal Development Department, Mantralaya,
Mumbai – 400 032.
2. Scheduled Tribe Certificate Scrutiny Committee,
Amravati Division, Amravati, Through its Member
Secretary, having its Office at Near Govt. Guest
House, Near Old Bypass Road, Chaprasipura,
Amravati – 444 602.

RESPONDENTS

Shri G.G. Mishra, counsel for the petitioner.
Shri N.R. Patil, Assistant Government Pleader for the respondents.

CORAM : **NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.**

DATE : **JANUARY 03, 2024**

ORAL JUDGMENT (PER : NITIN W. SAMBRE, J.)

RULE. Rule made returnable forthwith and heard finally
with consent of the learned counsel for the parties.

2. The order dated March 16, 2022 impugned in this writ
petition is passed by the respondent no.2-Scheduled Tribe Certificate
Scrutiny Committee, Amravati (for short, ‘the Committee’) thereby
rejecting the claim of the petitioner of belonging to ‘Mannewar’
Scheduled Tribe.

3. It is the case of the petitioner that she belongs to
‘Mannewar’ Scheduled Tribe and was accordingly issued a certificate to
that effect by the Sub-Divisional Officer on August 11, 2016.

4. Since the petitioner was desirous of pursuing higher education, she sought admission in Principal S.T. Kapadia Junior College, Amravati on a post reserved for the Scheduled Tribe Category. Her tribe claim was forwarded for verification to the respondent no.2-Committee. In support of her claim, the petitioner had relied on the documents which are as old as 1932 onwards. The petitioner claimed that since the documents pertaining to pre-Constitutional era have more probative value, her tribe claim is entitled to be validated.

5. Since the Committee was not satisfied with the documents placed on record by the petitioner in view of the entries of 'Telugu Mannewar' with regard to her father and grandfather, 'Manyawar' with regard to her cousin grandfather and 'Mannewar' with regard to her great-grandfather, her case was referred to the Vigilance Cell pursuant to the provisions of Sub-Rule (2) of Rule 12 of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules 2003.

The Vigilance Cell thereafter collected the documents in relation to her cousin grandfather, grandfather, cousin uncle, father and uncle wherein different entries were incorporated.

6. In the aforesaid backdrop, the petitioner was served with the show cause notice dated May 05, 2019 by the Committee calling upon her to explain the aforesaid adverse entries. The petitioner submitted her explanation and appeared before the Committee for hearing.

7. The Committee after considering the submissions made by the petitioner evaluated the documentary material placed on record and *vide* impugned order rejected the claim of the petitioner of belonging to 'Mannewar' Scheduled Tribe.

8. Shri G.G. Mishra, learned counsel for the petitioner in support of the prayer for quashing the impugned order and in furtherance thereto, for issuance of the validity certificate would invite our attention to the oldest entries of 1932 in relation to Lachhanna Bhumaiyya – cousin grandfather and of 1934 in relation to Narsaiyya Bhumaiyya – great-grandfather of the petitioner, which find place in the school leaving certificate, birth certificate and other documents. He would claim that the aforesaid documents are not disputed by the Committee. He would further claim that Telugu is a language and not a caste and that being so, the Committee erred in recording a finding by relying upon 'Telugu Mannewar' entry. In addition, he would claim that 'Telugu Manyawar' is also illegally relied upon by the Committee as tribe entry so as to invalidate the tribe claim of the petitioner. According to him, there is no caste by name Manyawar. In support of aforesaid contention, the learned counsel has drawn support from the judgments of this Court in *Anil Ramdas Mede Versus State of Maharashtra & Others* [2004(4) ALL MR 639] and *Suresh Kumar Balkrishna Naidu Versus The State of Maharashtra & Another*

[2020(3) ALL MR 518]. According to him, it can be inferred from the aforesaid judgments that there is no caste by name Telugu. In addition, he has relied upon the aforesaid judgments for justifying the importance of probative value of the old documents.

The learned counsel for the petitioner would further urge that the applicability and non-satisfaction of the affinity test cannot be termed as a litmus test in the case in hand and once the documentary evidence supports the claim of the applicant, the Committee cannot negate the such claim based on the affinity test. To substantiate his contention, he has drawn support from the judgment of the Apex Court in *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Versus State of Maharashtra & Others* [2023(2) Mh.L.J. 785 SC].

9. Shri N.R. Patil, learned Assistant Government Pleader for the respondents while opposing the aforesaid contentions would urge that in presence of the specific entries of 'Telugu' and 'Telugu Manyawar', the Committee was justified in rejecting the claim of the petitioner as it is not open for the Committee to interpret the caste entries. He would further urge that the Committee has considered the documentary material placed on record and as such based on the analysis of such evidence and non-satisfaction of the affinity test, rightly rejected the claim of the petitioner.

10. We have appreciated the aforesaid submissions. In the school leaving certificate dated June 27, 1932 pertaining to Lachchanna Bhumaiya – cousin grandfather of the petitioner, his caste is mentioned as ‘Manyawar’. In the table of the Birth-Death Register, the caste of Narsaiyya Bhumaiyya – great-grandfather of the petitioner is mentioned as ‘Mannewar’ way back on October 18, 1934. It appears that the relationship of the petitioner with aforesaid persons is not disputed even before the Committee as the Vigilance Cell has not noted anything adverse to that effect. The Committee thereafter proceeded to consider as to whether there exist any caste by name ‘Telugu Manyawar’, ‘Manyawar’ and ‘Mannewar’ and noted that the aforesaid entries in the records of blood relatives indicates that the petitioner does not belong to ‘Mannewar’ Scheduled Tribe.

11. The fact remains that ‘Telugu’ is not identified as a caste in any of the statutory provisions or otherwise. ‘Telugu’ is the official language spoken by the people like petitioner’s family members and declared in the Eighth Schedule appended to the Constitution of India. Similarly, ‘Manyawar’, ‘Telegu Manyawar’ and ‘Telugu’ are not castes recognized in any of the public documents which can be said to be other than the scheduled tribes. In such an eventuality, the observations of the Committee that the documents contain tribe entries as ‘Telugu’, ‘Telugu Manyawar’ and ‘Manyawar’ cannot be relied on for the purposes of rejecting the tribe claim of the petitioner.

12. Rather the entries in the documents which are relied upon by the petitioner duly depicts that the same pertain to the pre-Constitutional era and it has more evidentiary and probative value. All the documents produced by the petitioner point out that her ancestors were belonging to 'Mannewar' and as such the said fact fortifies her claim of belonging to 'Mannewar' Scheduled Tribe. As such, the old document of 1934 can be safely relied on for the purposes of grant of tribe validity certificate in favour of the petitioner.

13. Apart from above, though a finding is recorded by the Committee that the petitioner has failed to satisfy the affinity test, the fact remains that the satisfaction of the affinity test can be considered to be in aid for the purposes of further confirmation of the claim for grant of validity. The Apex Court had an occasion to consider the reliance to be placed by the Committee in the matter of grant of validity certificate based on the affinity test.

14. Based on the judgment of the Apex Court in *Kumari Madhuri Patil & Another Versus Addl. Commissioner, Tribal Development & Others* [(1994) 6 SCC 241], the Committee has formed a basis to apply the affinity test with the aid of Vigilance Cell report. The Apex Court has held that the Vigilance Cell while conducting an affinity test verifies the knowledge of the applicant

about the peculiar anthropological and ethnological traits, deities, rituals, customs, mode of marriage, death ceremonies, methods of burial of dead bodies etc. The Apex Court further held that by its nature, an affinity test can never be conclusive. So as to substantiate the aforesaid, the Apex Court has observed that if the applicant has lived in bigger urban areas for decades, such applicant cannot be expected to have knowledge of the aforesaid facts. The Apex Court has as such held that the question of conduct of the affinity test arises only in those cases where the Committee is not satisfied with the material produced by the applicant. Apart from above, the Apex Court has held that the affinity test cannot be applied as a decisively indicative test such as a litmus test so as to know the genuineness of a claim put forth by the applicant.

15. In support of the aforesaid findings, reliance can be placed on the observations of the Apex Court in paragraphs 25 and 32 of the judgment in *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti* (supra), which read as under :-

“25. Now, we come to the controversy regarding the affinity test. In clause (5) of Paragraph 13 of the decision in the case of *Kumari Madhuri Patil* it is held that in the case of Scheduled Tribes, the Vigilance Cell will submit a report as regards peculiar anthropological and ethnological traits, deities, rituals, customs, mode of

marriage, death ceremonies, methods of burial of dead bodies etc. in respect of the particular caste or tribe. Such particulars ascertained by the Vigilance Cell in respect of a particular Scheduled Tribe are very relevant for the conduct of the affinity test. The Vigilance Cell, while conducting an affinity test, verifies the knowledge of the applicant about deities of the community, customs, rituals, mode of marriage, death ceremonies etc. in respect of that particular Scheduled Tribe. By its very nature, such an affinity test can never be conclusive. If the applicant has stayed in bigger urban areas along with his family for decades or if his family has stayed in such urban areas for decades, the applicant may not have knowledge of the aforesaid facts. It is true that the Vigilance Cell can also question the parents of the applicant. But in a given case, even the parents may be unaware for the reason that for several years they have been staying in bigger urban areas. On the other hand, a person may not belong to the particular tribe, but he may have a good knowledge about the aforesaid aspects. Therefore, Shri Shekhar Naphade, the learned Senior Counsel, is right when he submitted that the affinity test cannot be applied as a litmus test. We may again note here that question of conduct of the affinity test arises only in those cases where the Scrutiny Committee is not satisfied with the material produced by the applicant.

32. Therefore, as observed earlier, the decision in the case of Vijaykumar cannot be read as a binding precedent laying down a legal principle that in every case of verification of caste claim, the Caste Scrutiny

Committee is under a mandate to refer the case to the Vigilance Cell. As under the scheme of ST Rules, affinity test is to be conducted by the Vigilance Cell, it follows that question of conducting of affinity test will arise only when a case is made out for referring the case to Vigilance Cell. If the Scrutiny Committee, after holding an enquiry is satisfied with the material produced on record, without referring the case to the Vigilance Cell, the Caste Scrutiny Committee is under a mandate to grant validity to the caste certificate. As noted earlier, in a given case, the Scrutiny Committee can order a limited inquiry by the Vigilance Cell. For example, if an applicant is relying upon a caste validity certificate granted to his blood relative and the Scrutiny Committee, after finding that the certificate is issued after due inquiry entertains a doubt about the relationship pleaded, it can direct the Vigilance Cell to make inquiry only about the relationship.”

16. In the case in hand, the petitioner has produced on record the documentary entries as old as of the years 1932 and 1934 onwards in relation to her ancestors thereby demonstrating that she belongs to ‘Mannewar’ Scheduled Tribe. Once such documents are already on record, it cannot be said that based on the affinity test the tribe claim is open for rejection as the documentary evidence which is of pre-Constitutional era has rightly justified the claim of the petitioner.

17. In the aforesaid background, we deem it appropriate to allow the present petition in following terms :-

- (A) The impugned order dated March 16, 2022 passed by the Respondent no.2-Scheduled Tribe Certificate Scrutiny Committee, Amravati Division, Amravati is hereby quashed and set aside.
- (B) It is declared that the petitioner has proved that she belongs to 'Mannewar' Schedule Tribe.
- (C) Within a period of four weeks from the date of production of this judgment, the Respondent no.2-Scheduled Tribe Certificate Scrutiny Committee, Amravati Division, Amravati shall issue validity certificate to the petitioner.

18. Rule is made absolute in aforesaid terms. No costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

APTE