



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

Writ Petition No. 2834 of 2018

Petitioner : Sandip son of Bapurao Dadmal, aged about 28
years, Occ: service, resident of Chora, Tahsil
Bhadrawati, District Chandrapur
versus

Respondents : 1) The Vice-Chairman/Member-Secretary of
Scheduled Tribe Caste Scrutiny Committee,
Gadchiroli
2) The Executive Engineer, Maharashtra State
Electricity Distribution Company Limited,
Nandurbar Division, Nandurbar

Ms P. D. Rane, Advocate for petitioner

Ms S. S. Jachak, AGP for respondent no. 1

Shri A. D. Mohgaonkar, Advocate for respondent no. 2

Coram : Sunil B. Shukre & S. M. Modak, JJ

Dated : 31st January 2019

Oral Judgment (Per Sunil B. Shukre, J)

1. Heard learned counsel for the parties. Rule. Heard forthwith by consent of parties.

2. The contention of learned counsel for the petitioner is that the impugned order passed by respondent no. 1-Committee rejecting caste claim of the petitioner as he belonging to “Mana” scheduled tribe, is perverse, arbitrary and against the settled principles of law. She further submits that the documentary evidence comprising pre-Constitutional documents have been rejected on the ground that the documents do not make mention about the words “Scheduled Tribe” which is against the settled principles of law as laid down in the case of **Gajanan Pandurang Shende v. Head-Master, Govt. Ashram School & ors** reported in 2018 (2) *Mh. L. J.* 460.

3. Learned Assistant Government Pleader for respondent no. 1 and learned counsel for respondent no. 2 both agree with the rejection of the documentary evidence on the ground of absence of the words “Scheduled Tribe” agitating against the principle of law laid down in the case of **Anand v. Committee for Scrutiny and Verification of Tribe Claims & ors** reported in 2011 (6) *Mh. L. J. (SC)* 919. However, they submit that as regards the other factor of the petitioner clearing affinity test, the issue would have to be examined on the basis of the facts of this case. They submit that an appropriate order be passed in this case.

4. There is no dispute that about genuineness of the pre-Independence documents filed on record, one of which is death certificate of grand-father of the petitioner who died on 13.9.1938. This certificate has been issued by Gram Panchayat, Kumbhari and extract taken from the Birth/Death Register was placed before the Scrutiny Committee and it is also forming part of the paper book of this writ petition. This document is not in dispute. The only dispute is about absence of the words “Scheduled Tribe” in the document. However, the law is now clear and the clarity of law has not been doubted by the respondents. Therefore, relying upon **Gajanan** and **Anand** (supra), we find that this document ought not to have been rejected by the Scrutiny Committee and on this aspect of the matter, the impugned order is illegal.

5. The pre-Independence document referred to above undoubtedly has a greater probative value and it is the law that ordinarily more reliance ought to be placed upon it as regards affinity test as held by Hon'ble Apex Court in **Anand** (supra) and it needs no corroboration. In the present case, there is no doubt about the pre-Independence document being available on record and, therefore, we do not find that there would be any need to look for further corroboration. Even otherwise, as held in **Anand** (supra), the affinity test may not be regarded as a litmus test for establishing link of the applicant with a Scheduled tribe. It is held,

nevertheless, the claim by an applicant that he is a part of scheduled tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribe's peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. and the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim. In respect of the affinity test, Hon'ble Apex Court has held that a cautious approach has to be adopted and with the migrations, modernisation and contacts with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe.

6. A perusal of impugned order, however, disappoints us. It nowhere makes any mention about the customs, traditions etc. prevailing generally in Mana Scheduled Tribe and the order straightway comes to a conclusion that the disclosure made by the relatives of the petitioners as regards customs, traits etc. do not match with established customs etc. Such an order would have to be said as perverse and arbitrary. In fact, as stated earlier, there was no necessity to look for any corroboration. In view of this, we find that the impugned order is illegal, arbitrary and, therefore, cannot sustain scrutiny of law.

7. Writ Petition is allowed. Impugned order is hereby quashed and set aside. Respondent no. 1-Committee is directed to issue validity certificate in the name of petitioner within four weeks from the date of receipt of this order.

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

S. M. MODAK, J

SUNIL B. SHUKRE, J

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