



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

WRIT PETITION NO. 5825 OF 2018

1. Ku. Mayuri Sudhakar Sawsakade
Aged 17 Years, Occu-Student;
minor through her natural guardian
father Sudhakar Nanaji Sawsakade

2. Ku. Vaishnavi Sudhakar Sawsakade
Aged 21 Years, Occu-Student;

Both R/o Village Saradpar Chak,
Tahsil Sindewahi, District Chandrapur.

... **PETITIONERS**

VERSUS

1. State of Maharashtra
Tribal Development Department,
through its Secretary, Mantralaya,
Mumbai.

2. Scheduled Tribe Certificate Scrutiny
Committee, Gadchiroli, through Member
Secretary, Office at : Zilha Parishad
Complex Area, Gadchiroli, Dist. Gadchiroli.

3. Bajiraoji Karanjekar College of Pharmacy,
Sakoli, through its Principal, District
Bhandara.

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4. Anand Niketan Mahavidyalaya
through its Principal, Anand Van, Warora,
District Chandrapur. ... **RESPONDENTS**

Mr. S. D. Borkute, Advocate for Petitioners.

Ms. K. S. Joshi, AGP for Respondent Nos.1 & 2 – State.

None for the Respondent Nos.3 & 4.

**CORAM : SUNIL B. SHUKRE AND
S. M. MODAK, JJ.
DATE : JUNE 10, 2019.**

JUDGMENT [PER : S. M. MODAK, J.]

. Heard learned Counsel for the Petitioners and learned AGP
for State.

2. By this Petition, Petitioners are challenging the order dated
3rd July 2018 passed by the Respondent No.2 – Scheduled Tribe Certificate
Scrutiny Committee, Gadchiroli (*hereinafter be referred to as 'the Scrutiny
Committee' for the sake of convenience*), thereby invalidated the caste claim
of the Petitioners as 'Mana' Scheduled Tribe.

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3. Even though there is a validity certificate issued by the Respondent No.2 – Scrutiny Committee in favour of Sudhakar Nanaji Sawsakade i.e. father of both the Petitioners, the said Committee invalidated the caste certificates issued in favour of the Petitioners. The impugned order was passed on 3rd July 2018.

4. The law on this issue is already settled. If there are earlier validities, the Scrutiny Committee is supposed to issue fresh validities to the near relative. In spite of this interpretation of law, there is a strange thing that Respondent No.2 – Scrutiny Committee refused to issue validity certificate to closest blood relative of Sudhakar Nanaji Sawsakade.

5. We have gone through the relevant findings from the impugned order. The Respondent No.2 – Scrutiny Committee gave a reasoning that validity certificate to father of the Petitioners – Sudhakar Sawsakade was granted without conducting a police verification/enquiry. We think this is a half hearted attempt on behalf of the Respondent No.2 – Scrutiny Committee. The Scrutiny Committee nowhere had given a finding that the documents relied upon by the father of the Petitioners –

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Sudhakar Sawsakade and the documents relied upon by the present Petitioners are forged documents.

6. This issue was answered by this Court in the matter of ***Apoorva Vinay Nichale V/s Divisional Caste Certificate Scrutiny Committee No.1 and others, reported in 2010(6) Mh.L.J. 401***. It has been observed in Paragraph No.9 as follows.

“9. There is, however, no doubt as observed by us earlier that if a committee is of the view that the earlier certificate is obtained by fraud it would not be bound to follow the earlier caste validity certificate and is entitled to refuse the caste claim and also in addition initiate proceedings for cancellation of the earlier order.”

The Respondent No.2 - Scrutiny Committee, on one hand declined to validate the tribe certificate of the Petitioners, but on the other hand, has not taken any steps for invalidating the already granted certificate to the father of the Petitioners. This has created an anomalous situation as father of the Petitioners is having validity certificate being a member of 'Mana' Scheduled Tribe, at the same time, his daughters – Petitioners are being

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denied of the same benefit. On the sole ground, the impugned decision needs to be set-aside. By no stretch of interpretation it can be said that validity certificate obtained without vigilance inquiry is by playing fraud.

7. In addition to this, we have perused the documents relied upon by the Petitioners. They are also referred by the Respondent No.2 – Scrutiny Committee. We do agree that the caste certificates are not the relevant documents. We are not considering the fresh documents, post-constitutional documents, but, we find one pre-independence document of the year 1946-47. The name of great-great-grandfather namely, Paika Antu Sawsakade is mentioned therein. It is in respect of entering the name of Shivram Sawsakade as one of the son of Paika Antu Sawsakade. This Shivram is great grandfather of Petitioners. There is a reference of 'Mana' in the remark column. The Vigilance Committee opines that it does not conclusively prove 'Mana' as a Scheduled Tribe. The Scrutiny Committee has endorsed that view.

8. It is pertinent to note that in those days there was no benefit extended to the members of either Scheduled Caste or Scheduled Tribe.

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So one cannot expect to specifically write 'Mana' as a Scheduled Tribe during that period. The said issue was conclusively decided by this Court in the matter of ***Gajanan Pandurang Shende V/s Head Master, Govt. Ashram School, Dongargaon Salod and others, reported in 2018 (2) Mh.L.J. 460*** in Paragraph No.19. Relevant portion of the said paragraph is reproduced below :

“19. In our view, the concept of recognized Scheduled Tribe for the purposes of giving benefits and concessions was not prevailing prior to 1950 and, therefore, only caste or community to which a person belonged was stated in the birth, school and revenue records maintained. The documents are issued in the printed format, which contains a column under the heading 'Caste' and there is no column of tribe. Irrespective of the fact that it is a tribe, the name of tribe is shown in column of caste. While entering the name, the distinction between caste and tribe is ignored.”

9. There is no grievance of the Respondent No.2 – Scrutiny Committee that this document is a forged document. The genealogical tree is annexed with this Petition at Page No. 41. There is no dispute about the relationship of the Petitioners with said Paika Antu Sawsakade. So, the

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Scrutiny Committee was wrong in invalidating the caste certificates of the Petitioners. When we are convinced on these two grounds, there is no need to go into the result of the affinity test. It needs to be considered only in case of doubt about the pre-constitutional documents.

10. In that view of the matter, the impugned order dated 3rd July 2018 passed by the Respondent No.2 - Scrutiny Committee is not sustainable and is hereby quashed and set-aside. Hence, the following order.

ORDER

- (A) Writ Petition is allowed.
- (B) The order dated 3rd July 2018 passed by the Respondent No.2 – Scheduled Tribe Certificate Scrutiny Committee, Gadchiroli is set-aside.
- (C) The Respondent No.2 – Scrutiny Committee is directed to issue validity certificates in favour of both the Petitioners in respect of 'Mana' Scheduled Tribe within a period of three weeks from the date of receipt of this order.

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(D) The Petitioners are directed to appear before the Respondent No.2 – Scheduled Tribe Certificate Scrutiny Committee, Gadchiroli on 24th June 2019 and to co-operate the said Committee.

11. Writ Petition stands disposed of, with above directions.

JUDGE

JUDGE

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