



J-wp6745.18.odt

1/4

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

WRIT PETITION No.6745 OF 2018

Abhijit s/o. Jageshwar Mangare,
Aged 20 years,
Occupation : Student,
R/o.'B' Type, Qtr No.32, Block No.8,
Ekta Nagar Colony,
Telwasa, Post – Konda, Tah. Bhadrawati,
Distt. Chandrapur. : PETITIONER

...VERSUS...

1. The Vice-Chairman/Member-Secretary,
Scheduled Tribe Caste Certificate Scrutiny Committee,
Gadchiroli.
2. The Principal,
Jawaharlal Darda Institute of Engineering
& Technology, Lohara, Yavatmal.
3. The Registrar/Vice-Chancellor,
Sant Gadge Baba University, Amravati. : RESPONDENTS

Ms. P.D. Rane, Advocate for the Petitioner.
Shri D.P. Thakare, Addl. Government Pleader for Respondent No.1.
Shri M.P. Munshi, Advocate for the Respondent No.3.

CORAM : SUNIL B. SHUKRE AND
S.M. MODAK, JJ.

DATE : 5th FEBRUARY, 2019.

ORAL JUDGMENT : (Per : Sunil B. Shukre, J.)

1. Heard learned counsel for the parties. Rule. Heard forthwith by consent of parties.
2. Petitioner has challenged the order of respondent No.1 Committee rejecting his caste claim of he belonging to "Mana Scheduled Tribe" on the ground that it is arbitrary and perverse. The Scrutiny Committee has rejected the caste claim of the petitioner when the caste certificates to his paternal uncles, cousin brothers etc. were issued, no police vigilance report was obtained prior to issuance of those certificates.
3. Learned counsel for the petitioner submits that in addition to above documents the petitioner has furnished school leaving certificate, sale-deed and jamabandi in respect of her cousin grand-father and grate grand-father respectively. These documents being pre-constitutional could not have be rejected by respondent No.1 Committee. As regards the finding of the Scrutiny Committee that the petitioner has failed to prove the affinity test, Ms. P.D. Rane has relied upon the decision of this Court in Gajanan Pandurang Shende vs. Head-Master Govt. Ashram School, Dongargaon Salod and others, reported in 2018(2) Mh.L.J 460 and the decision of Hon'ble Apex Court in Anand vs. Committee for Scrutiny and Verification of Tribe Claims and others, reported in 2011(6) Mh.L.J (S.C.) 919.
4. We have perused the impugned order and the case law

pressed into service before us. Hon'ble Apex Court in Anand (supra) has in clear terms held that while dealing with the documentary evidence, greater reliance may be placed on Pre-Independence Document because they furnish a higher degree of probative value to the declaration of status of a caste as compared to Post-Independence Document. As regards the affinity test the Hon'ble Apex Court has in clear terms held that a cautious approach has to be adopted, and with the migrations, modernization and contacts with other communities, the tribal communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. It has been held that affinity test may not be regarded as litmus test for establishing the link of the applicant with a scheduled tribe. Thus, it is clear that affinity test is to be used to corroborate the documentary evidence and it is not to be used as the sole criteria to reject a caste claim.

5. In view of the legal position narrated above, this writ petition will have to be allowed. As we have found the petitioner as entitled to get validity from the respondent No.1 Committee, we find that apart from the directions to be issued to the respondent No.1 Committee, it is also necessary for us to issue further directions in view of the fact that the petitioner claims that he has been made to pay the fees for receiving education from the respondent No.2-College as a Open Category

candidate. If this is true, a direction for refund of the excess fees would also have to be made, as has been done by the coordinate Division Bench of this Court in Writ Petition No.3204/2013, decided on 15th December, 2017.

6. It is accordingly allowed.

7. The impugned order is hereby quashed and set aside and it is directed that the Respondent No.1 Committee shall issue validity certificate to the petitioner as belong to the Mana Scheduled Tribe within 15 days from the date of receipt of this order.

8. If the petitioner has paid excess fees on account of the fact that till date the petitioner has been treated as an Open Category candidate, the excess fees charged from the petitioner shall be refunded to him within four weeks of the submission of the validity certificate and if this is not done, the respondent No.2, who has to refund the fee, shall also in addition to the amount of the excess fee, pay the compensation of Rs.25,000/- to the petitioner which shall be recoverable as if this order is a decree of the Civil Court.

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

JUDGE

JUDGE

वाडोदे