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

WRIT PETITION NO. 4396 OF 2014

PETITIONER :- Ku. Seema Mukunda Nannaware,
Aged about 21 years, Occ. Student,
R/o. Village Doma, Tq. Chimur,
Dist. Chandrapur.

...V E R S U S...

RESPONDENTS :-
1. The Schedule Tribe Certificate Scrutiny Committee, Gadchiroli Division, Nagpur Adivasi Vikas Bhavan, Third Floor, Giripeth, Amravati Road, Nagpur through its Joint Commissioner.

2. The Maharashtra University Health Sciences Nashik, Through its Vice Chancellor.

3. The Indira Gandhi Medical College and Hospital, Gandhibag, Nagpur through The Dean.

Shri S. D. Malke, Advocate for petitioner.
Smt. K. R. Deshpande, A.G.P. for respondent nos. 1 and 3.
Shri Abhijit Deshpande, Advocate for respondent no. 2.

CORAM :- SUNIL B. SHUKRE AND
MILIND N. JADHAV, JJ.

RESERVED ON :- 04.09.2019.

PRONOUNCED ON :- 13.11.2019.

ORAL JUDGMENT (PER : MILIND N. JADHAV, J.):

1. Heard finally by consent of the parties.

2. By this Petition, the Petitioner has challenged the order dated 11.06.2014 passed by the Scheduled Tribe Caste Scrutiny Committee, Gadchiroli Division, Nagpur (in short 'the Committee') invalidating the claim of the Petitioner as belonging to "Mana" (Scheduled Tribe category) and consequently cancelling and confiscating the caste certificate dated 05.01.2012 issued in the name of the Petitioner as belonging to "Mana" Scheduled Tribe. The impugned order also states that if the Petitioner had been given admission on the seat reserved for Scheduled Tribe candidate, in that case, her admission is liable to cancelled forthwith and any scholarship paid to her be recovered as arrears of land revenue. The Petitioner is presently studying in IInd year M.B.B.S. course in Respondent no.2-College. Being aggrieved, the Petitioner has knocked the doors of this Court.

3. Before the Committee, the Petitioner had produced eight documents for seeking validity of her caste claim, viz.,

(i) 5th Standard School Leaving Certificate and extract of School Admission Register dated 05.07.1999 of Seema Mukunda Nannaware (Petitioner);

(ii) 12th Standard School Leaving Certificate dated 06.07.1999 of Seema Mukunda Nannaware (Petitioner);

(iii) 7th Standard School Leaving Certificate dated 13.07.1966 of Mukunda Sitaram Nannaware (Father of the Petitioner);

(iv) 11th Standard School Leaving Certificate dated 07.07.1986 of Mukunda Sitaram Nannaware (Father of the Petitioner);

(v) Caste Validity Certificate dated 16.11.2009 of Shilpa Mukunda Nannaware (Sister of the Petitioner);

(vi) Revenue Record extract of the year 1918-1919 of Soma S/o. Gondu Mana (Great Grandfather of the Petitioner);

(vii) Adhikar Abhilekh of the year 1954-55 of Ravaji S/o. Kavadu Mana (cousin Great Grandfather of the Petitioner);

(viii) 7/12 extract of land belonging to and bearing the name and caste of Mukunda Sitaram Nannaware (Father of the Petitioner).

Out of these eight documents, two documents standing in the name of the Petitioner recorded her caste as “Mana”, viz. 5th standard School Leaving Certificate and extract of School Leaving Register and 12th standard School Leaving Certificate. Three other documents standing in the name of Petitioner’s father, viz. dated 13.07.1966, 07.07.1986 and 2010-11 also recorded the caste of the Petitioner’s father as “Mana”. These three documents are 7th

standard School Leaving Certificate, 11th standard School Leaving Certificate and extract of 7/12 pertaining to land belonging to the Petitioner's father. Further, the Petitioner had produced one document of the year 1918-19 in the name of her great grandfather recording his caste as "Mana". Another document of the year 1954-55 also recorded the caste of her cousin grandfather as "Mana". Lastly, the Petitioner had produced the caste validity certificate dated 16.11.2009 of her real elder sister which recorded and validated her caste as "Mana". On the strength of the above eight documents, vigilance enquiry was conducted and three out of the above eight documents pertaining to years 1918-19, 1955, 1956 were obtained by the Police Inspector, which certified the caste recorded in the said documents belonging to her great grandfather, uncle and father as "Mana".

4. The copy of Vigilance Report was served on the Petitioner. The Petitioner was represented by her uncle and elder sister Shilpa Mukunda Nannaware before the Committee at the time of hearing and made their submissions. After considering the documentary evidence available on record, oral and written submissions, the Committee recorded its findings alongwith reasons, *interalia*, negating the tribe claim of the Petitioner. However, while recording

the reasons, on the basis of documentary evidence available on record, the Committee recorded a specific finding in paragraph no. 7 of the impugned order which reads thus :-

"*So far as documentary evidence is concerned, the caste of the applicant and her relatives is consistently recorded as "Mana" in their school and revenue record during the period 1918-19 to 1999 the caste of the applicant is recorded as S.T. (Mana) on 06.07.2004 in her transfer certificate issued by the Principal Jawahar Navodaya Vidyalaya, Talodhi (M.S.). However, it is pertinent to note that her caste is recorded as only Mana on 05.07.1999 in her primary school leaving certificate. Further caste of the applicant's father is also recorded as only "Mana" in his school leaving certificate on 13.07.1966 and 07.07.1986. During the course of hearing applicant's uncle and sister could not prove that this change in caste of applicant from "Mana" to S.T. (Mana) was effected by following due procedure of law. Moreover, Mana caste entries in respect of applicant and her father pertaining to the year 1999 and 1966 and 1986 has more probative value hence her S.T. (Mana) of the year 2004 is discarded. Therefore, in our view otherwise it does not depose them as Mana S.T. at any point of time. It is pertinent to note that in Maharashtra there is also Mana, Badwaik Mana, Khad Mana, Kshatriya Mana, Rawad Mana, Kunbi Mana, Mani.Mane etc which are not tribe communities."*

5. While recording that caste of the Petitioner and her relatives was consistently recorded as "Mana" in the school as well as revenue records from 1918-1999 to 1999, the negation and

invalidation of the Petitioner's claim on the ground that the Petitioner could not prove the change in caste from "Mana" to "Scheduled Tribe Mana" is arbitrary and high-handed. The Committee has further recorded following findings while rejecting claim of the Petitioner in paragraph nos. 8 to 17 of the impugned order. The gist of the said findings reads thus :-

"(a) that 'Mana' community was included in the list of Scheduled Tribes in relation to the State of Maharashtra for the first time in the year 1960, that too in the specified area only, and the petitioner has failed to establish that he or his forefathers hail from the said area and migrated to the present place of their residence, from the said specified scheduled area.

(b) that in the year 1967, 'Mana' community was included in the list of Other Backward Classes at Serial No.268 and later on in the list of Special Backward Classes at Serial No.2 in relation to the State of Maharashtra,

(c) that there are nontribal communities like 'Badwaik Mana', 'Khand Mana', 'Kshatriya Mana', 'Kunbi Mana', 'Maratha Mana', 'Gond Mana', 'Mani'/'Mane', etc., and the petitioner has failed to satisfy crucial affinity test to establish that he belongs to 'Mana, Scheduled Tribe', which is an entry at Serial No.18 in the Constitution (Scheduled Tribes) Order, 1950.

(d) that the documents produced simply indicate the caste as 'Mana'

and not 'Mana, Scheduled Tribe'.

6. Thus, the claim of the Petitioner has been dismissed on the reasoning that documents submitted by the Petitioner in support of her tribe claim wherein the caste of the Petitioner and her relatives is recorded as “Mana” and the same not being supported by the affinity test, could not be treated as conclusive proof and relied upon for the purpose of granting advantage to the Petitioner. Further, the Committee has also observed that the Petitioner’s father did not take any benefit of his caste “Mana” while being “Mana” while in service and this was looked upon as as an important facet for rejecting the claim of the Petitioner.

7. Shri S. D. Malke, learned counsel appearing for the Petitioner submitted that by Clause-II of the Constitutional Scheduled Tribe Order, 1950 issued by the President under exercise of power conferred by Clause-II of Article 342 of the Constitution, it has been provided that Tribes or Tribal community or parts of groups within Tribes or Tribal community specified in Part-I to XXII of the Schedule to the order shall in relation to the State to which those parts respectively relate be deemed to be Scheduled Tribes so far as as regards members thereof, residence in the locality specified in relation to them respectively in those parts of that Schedule. He

submitted that entry no. 12 in the relative part in the Schedule to the order reads thus:-

5. Initially, Entry No.12 in the relevant Part in the Schedule to the Order read as "Gond, including Madia (Maria) and Mudia (Muria)". By the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act No.63 of 1956, the said Entry No.12 was substituted by Entry No.12 in paragraph 7 of Part VIII(A) of the Schedule to the Order, which was as follows :

"7. In (1) Melghat tahsil of the Amravati district.

(2) Gadchiroli and Sironcha tahsils of the Chanda district.

(3) Kelapur, Wani and Yeotmal tasils of the Yeotmal district :-

12. Gond, including - Arakh or Arrakh, Agaria, Asur, Badi Maria or Bada Maria, Bhatola, Bhimma, Bhuta, Koilabhuta or Koilabhuti, Bhar, Bisonhorn Maria, Chota Maria, Dandami Maria, Dhuru or Dhurwa, Dhoba, Dhulia, Dorla, Gaiki, Gatta or Gatti, Gaita, Gond Gowari, Hill Maria, Kandra, Kalanga, Khatola, Koitar, Koya, Khirwar or Khirwara, Kucha Maria, Kuchaki Maria, Madia (Maria), Mana, Mannewer, Moghya or Mogia or Monghya, Mudia (Muria), Nagarchi, Nagwanshi, Ojha, Raj, Sonjhari Jhareka, Thatia or Thotya, Wade Maria or Vade Maria."

He submitted that, in view of the aforesaid position, the Committee is obviously wrong in holding that 'Mana' community was included in the list of Scheduled Tribes Order in relation to the State of Maharashtra for the first time in the year 1960. In fact, it was included in the said Order in the year 1956.

8. Shri Malke submitted that in the cluster of tribes in Entry No.12, 'Mana' is one of the recognized Scheduled Tribes. Clause 7 above the said entry, however, restricts the status of recognized Scheduled Tribes only to those tribals, who were residing in - (1) Melghat tahsil of the Amravati district, (2) Gadchiroli and Sironcha tahsils of the Chanda district, and (3) Kelapur, Wani and Yeotmal tahsils of the Yeotmal district. The status of recognized Scheduled Tribe was not extended to the tribals in Entry No.12 not residing in the aforestated three areas in the State of Maharashtra. To claim the status of a recognized Scheduled Tribe in the State, it was required to be established that the ordinary place of residence of a tribal or his forefathers was one or more of the areas at Serial Nos.(1) to (3) in Clause 7 above Entry No.12 or that there was an evidence of their migration in non-tribal areas.

9. Shri Malke submitted that, the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 (Act No.108 of 1976) was passed by the Parliament and by this Act, the entire Schedule to the Order, as it stood prior to amendment, was substituted by a new Schedule consisting of XVI Parts. Part IX of the new Schedule relates to the State of Maharashtra, and Entry No.18 of that Part reads thus :-

"18. Gond, Rajgond, Arakh, Arrakh, Agaria, Asur, Badi Maria, Bada Maria, Bhatola, Bhimma, Bhuta, Koilabhuta, Koilabhuti, Bhar, Bisonhorn Maria, Chota Maria, Dandami Maria, Dhuru, Dhurwa, Dhoba, Dhulia, Dorla, Kaiki, Gatta, Gatti, Gaita, Gond Gowari, Hill Maria, Kandra, Kalanga, Khatola, Koitar, Koya, Khirwar, Khirwara, Kucha Maria, Kuchaki Maria, Madia, Maria, Mana, Mannewar, Moghya, Mogia, Monghya, Mudia, Muria, Nagarchi, Naikpod, Nagwanshi, Ojha, Raj, Sonjhari, Khareka, Thatia, Thotya, Wade Maria, Vade Maria."

10. The Act No.108 of 1976 was published in the gazette on 29-9-1976, and the area restriction of Scheduled Tribes in the State of Maharashtra for all the tribes, including 'Mana' tribe, was deleted. The members of different tribes or communities in the State of Maharashtra included in Entry No.18, are treated and conferred with the status of recognized Scheduled Tribes, irrespective of their place of residence in the State. The net result of such deletion was that the two-fold requirement of ordinary place of residence in tribal areas and migration to non- tribal areas, was done away with.

11. Shri Malke submitted that in the decision of the Apex Court in the case of ***Jaywant Dilip Pawar v. State of Maharashtra & Ors., delivered in Civil Appeal No.2336 of 2011 on 8-3-2017***, the decision of the Scrutiny Committee that the relatives of the appellants in the said case were not residents of the area mentioned in the Presidential Order, 1956, is set aside and it is held that what the

appellants were required to establish was that they belong to the community mentioned in the Schedule of the Act No.108 of 1976. It is thus clear that the Petitioner in the present case, was not required to establish that either her forefathers were the ordinary residents of the place meant for the tribals in the Constitution (Scheduled Tribes) Order prevailing prior to 1976 or her forefathers migrated from the said area to the present place of residence. The Committee was, therefore, wrong in asking the petitioner to establish such facts and rejecting the claim of validity on failure to establish it.

12. Shri Malke submitted that in the year 1967, a dispute arose in the decision of the Apex Court in the case of ***Dina v. Narayan Singh, reported in 38 ELR 212***, as to whether 'Mana' community included under Entry No.12 of the Constitution (Scheduled Tribes) Order, 1950, as amended in the year 1956, is a sub-tribe or 'Gond' or a sub-tribe of 'Maratha' or an independent tribe. The appellant in the said decision contested the election as a candidate belonging to 'Mana', Scheduled Tribe and not 'Gond Mana'. The High Court set aside the election holding that the appellant belonged to Kshatriya Badwaik Mana, which is a sub-caste of 'Maratha' and not 'Gond Mana' and, therefore, not eligible to contest the election. The question posed for consideration was whether it was intended to declare

under Entry 12 Manas who are not Gonds as members of Scheduled Tribes. The Apex Court confirmed the decision of the High Court. It held that 'Mana' in Entry No.12 is one which is a sub-tribe of 'Gond' or has some affinity with Gonds. It holds that there is a community called 'Mana' who are 'Marathas' and not 'Gonds' - known as 'Kshatriya Mana' or 'Kunbi Mana'. 'Mana' community under Entry 12 is neither a sub-tribe of 'Maratha' nor an independent tribe. It further held that the appellant, elected candidate, belonged to 'Mana', which is a sub-caste of 'Maratha'.

13. Shri Malke referred to and relied upon the Constitution Bench judgment of the Apex Court in the case of ***State of Maharashtra v. Milind and others, reported in 2001(1) Mh.L.J. 1*** and brought to our notice excerpts of paragraph no. 13, 21 and 34 thereof which reads thus :-

"13. ... This apart when no other authority other than the Parliament, that too by law alone can amend the Presidential Orders, neither the State Governments nor the courts nor tribunals nor any authority can assume jurisdiction to hold enquiry and take evidence to declare that a caste or a tribe or part of or a group within a caste or tribe is included in Presidential Orders in one Entry or the other although they are not expressly and specifically included. A Court cannot alter or amend the said Presidential Orders for the very good reason that it has no power to do so within the meaning, content and scope of Articles 341 and 342. It is not possible to hold that either any enquiry

is permissible or any evidence can be let in, in relation to a particular caste or tribe to say whether it is included within Presidential Orders when it is not so expressly included."

In paragraph no. 21, the Apex Courts held as under :

"21. In two cases, Bhaiya Ram Munda vs. Anirudh Patar & Ors., 1971(1) SCER 804 and Dina vs. Narayan Singh, 38 ELR 212, Division Benches of this Court took a contrary view to say that evidence is admissible for the purpose of showing what an Entry in the Presidential Order was intended to be while stating that the Entries in the Presidential Order have to be taken as final and the scope of enquiry and admissibility of evidence is confined within the limitations indicated."

The Apex Court summarized the law in paragraph no. 34 as under :

"34. In the light of what is stated above, the following positions emerge :-

1. It is not at all permissible to hold any enquiry of let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the concerned Entry in the Constitution (Scheduled Tribes) Order, 1950.

2. The Scheduled Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe

or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it.

3. A notification issued under Clause (1) of Article 342, specifying Scheduled Tribes, can be amended only by law to be made by the Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under Clause (1) of Article 342 only by the Parliament by law and by no other authority.

4. It is not open to State Government or courts or tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under Clause (1) of Article 342.
5. Decisions of the Division Benches of this Court in Bhaiya Ram Munda vs. Anirudh Patar & others, 1971(1) SCER 804 and Dina vs. Narayan Singh, 38 ELR 212, did not lay down law correctly in stating that the enquiry was permissible and the evidence was admissible within the limitations indicated for the purpose of showing what an entry in the Presidential Order was intended to be. As stated in position (1) above no enquiry at all is permissible and no evidence can be let in, in the matter."

14. Shri Malke submitted that the earlier decision of the Apex Court in Dina's case has been overruled by the Constitution Bench decision of the Apex Court in Milind's case. Therefore, the effect of the decision of the Constitution Bench in Milind's case in overruling Dina's case was needed need to be seen and considered.

15. In Dina's case, the Apex Court considered the evidence which led to establish that 'Mana' in Entry No.12 in the Constitution (Scheduled Tribes) Order, 1950 in relation to the State of Maharashtra was of 'Mana', which is a sub-tribe of 'Gond' (a main tribe) and it was not of 'Kashtriya Badwaik Mana', which is a sub-tribe of 'Maratha'. The Court also rejected the argument that 'Mana' was an independent tribe, which had no affinity with 'Gond'. The effect of overruling of the decision in Dina's case is that the entry 'Mana', which is now in the cluster of tribes at Serial No.18 in the Constitution (Scheduled Tribes) Order, has to be read as it is and no evidence can be let in, to explain that entry 'Mana' means the one which is either a 'sub-tribe of Gond' or synonym of 'Gond' and/or it is not a sub-tribe either of 'Maratha' or of any other caste or tribe.

16. The aforesaid decisions have been stated because the impugned order expressly rejects the claim of the Petitioner as “Mana Schedule Tribe” being not mentioned in any of the documents relied upon by her. In view of the decision of the Constitution Bench in Milind's case, any tribe or tribal community or part of or group within any tribe can be excluded from the list of Scheduled Tribes issued under Clause (1) of Article 342 of the Constitution of India only by the Parliament by law and by no other authority. To hold that 'Mana'

in Entry No.18 in the Constitution (Scheduled Tribes) Order does not include 'Kashtriya Badwaik Mana', 'Maratha Mana', 'Kunbi Mana', etc., would amount to permitting evidence to be let in to exclude certain 'Mana' communities from the recognized Scheduled Tribe. Such tinkering with the Presidential Order is not permissible. Once it is established that 'Mana' is a tribe or even a sub-tribe, it is not permissible to say that it is not a recognized Scheduled Tribe in Entry No.18 of the Order. The Scrutiny Committee has failed to understand such effect of overruling the decision in Dina's case.

17. In another decision of the Division Bench of this Court in the case of ***Mana Adim Jamat Mandal v. State of Maharashtra and others, reported in 2003(3) Mh.L.J. 513***, it is held in paragraph no. 22 as under :

"22. It is clear from the plain reading of the aforesaid propositions that the Supreme Court was of the view that Dina's case - 38 ELR 212 was not decided correctly to the extent it held that enquiry was permissible and evidence was admissible for the purpose of showing what an entry in the Presidential Order was intended to be. In fact the court has clearly observed that no enquiry at all is permissible and no evidence can be let in, in the matter. In our view the Supreme Court decision in second Dina's case i.e. Dadaji @ Dina vs. Sukhdeo Baba and others which considered the effect of omission of the word "including", also cannot be taken to be good law after the

decision of the Constitution Bench in State of Maharashtra vs. Milind, though the said decision is not expressly overruled. The Constitution Bench overruled the first Dina case i.e. Dina vs. Narayan Singh with reference to Entry 12 of the Scheduled Tribes Order though the court did not specifically refer to second Dina's case. It is needless to say that the same stood impliedly overruled as the law declared by the Constitution Bench in Milind's case was contrary to what was stated in second Dina's case."

In paragraph no. 24 of the said decision, this Court has held as under :

"24. ... In any event even if it is assumed that there was a separate community which is called as Mana in Vidharbha region which has no affinity with Gond tribe that community would also fall within the scope of Scheduled Tribes Order by virtue of the Amendment Act, 1976 and the State Government was not entitled to issue orders or circulars or resolutions contrary thereto. Since under Entry 18 Manas are specifically included in the list of Scheduled Tribes in relation to the State of Maharashtra, Manas throughout the State must be deemed to be Scheduled tribe by reason of provisions of the Scheduled Tribes Order. Once Manas throughout the State are entitled to be treated as a Scheduled Tribe by reason of the Scheduled Tribes Order as it now stands, it is not open to the State Government to say otherwise, as it has purported to do in various Government Resolutions. The Mana community in the instant case having been listed in the Scheduled Tribes Order as it now stands, it is not open to the State Government or, indeed to this court to

embark upon an enquiry to determine whether a section of Manas was excluded from the benefit of the Scheduled Tribes Order."

18. The above view has been confirmed by the Apex Court in the case of ***State of Maharashtra & Ors. v. Mana Adim Jamat Mandal, reported in (2006) 4 SCC 98***, and it is specifically held that 'Mana' is a separate Scheduled Tribe by itself included in Entry No.18 of the Constitution (Scheduled Tribes) Order and it is not a sub-tribe of 'Gond'.

19. The two decisions in Mana Adim Jamat's case support the view which we have taken. In view of the aforesaid law laid down by this Court and the Apex Court, the Committee was clearly in error in holding that 'Mana' community was included in the list of Other Backward Classes and later on in the list of Special Backward Classes, and though the Petitioner has established that she belongs to “Mana” community, it is not established that she belongs to “Mana Scheduled Tribe”.

20. 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

that were 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. It is the entire 'Mana' community all over the State, which is conferred a status of a recognized Scheduled Tribe in the State. The entry 'Mana' at serial No.18 in the Constitution (Scheduled Tribes) Order has, therefore, to be read as it is and no evidence can be led to exclude certain communities of 'Mana' from granting protection or benefits. The finding of the Committee to that extent cannot, therefore, be sustained.

21. In the decision of the Apex Court in the case of ***Anand v. Committee for Scrutiny and Verification of Tribe Claims and others, reported in (2012) 1 SCC 113***, the Apex Court has laid down in paragraph no. 22 of its decision broad parameters, which should be kept in mind while dealing with a caste claim. Paragraph no. 22 reads thus :-

"22. It is manifest from the afore-extracted paragraph that the genuineness of a caste claim has to be considered not only on a thorough examination of the documents submitted in support of the

claim but also on the affinity test, which would include the anthropological and ethnological traits, etc., of the applicant. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. Nevertheless, we feel that the following broad parameters could be kept in view while dealing with a caste claim:

(i) While dealing with documentary evidence, greater reliance may be placed on pre-Independence documents because they furnish a higher degree of probative value to the wp3308.13.odt declaration of status of a caste, as compared to post-Independence documents. In case the applicant is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact, the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant;

(ii) While applying the affinity test, which focuses on the ethnological connections with the Scheduled Tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, the affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe.

Nevertheless, the claim by an applicant that he is a part of a 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. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim."

The Apex Court has in clear terms held that while dealing with the documentary evidence, greater reliance may be placed on pre-Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-Independence documents. It has added that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be accorded to the Applicant. In respect of the affinity test, the Apex Court has laid down that a cautious approach has to be adopted, and with the migrations, modernization and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. It has also held that the affinity test may not be regarded as a litmus test for establishing the link of the Applicant with a Scheduled Tribe. The 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 claim. Keeping in mind these parameters, each case has to be tested on its own facts.

22. PER CONTRA Smt. Deshpande, learned Assistant Government Pleader appearing for respondent submitted that in view of the decision passed by this Court in P.I.L. No. 102/2013 read with with P.I.L. No. 11/2016 decided on 15.04.2016, it is required that even though the caste validity certificate may have been granted to a particular member in the family, like in the instant case, still the Petitioner will have to undergo the rigour of the affinity test. She submitted that in the instant case, the Petitioner's sister who has been granted caste validity certificate dated 16.11.2009 has not gone through the rigour of any scrutiny and the proposition that if kith and kin of an Applicant has already been granted validity certificate then such candidate should be granted validity certificate does not hold true in view of the ratio given in the common judgment pass by this Court in ***P.I.L. No. 102/2013 (Narayan Jambule Vs. The ST Certificate Scrutiny Committee, Gadchiroli) and P.I.L. No. 11/2016 (Bhagwan Nanaware Vs. The ST Certificate Scrutiny Committee, Gadchiroli) decided on 15.04.2016***. We find it necessary to reproduce the relevant paragraphs which reads thus :-

"We had observed in the order aforementioned that, in view of the Judgment of the Division Bench of this Court in the case of Apoorva d/o. Vinay Nichale .vs. Divisional Caste Certificate Scrutiny Committe No.1 and Others reported in 2010 (6) Mh.L.J. 401 , if the kith and kin of a candidate is already granted Validity Certificate, such candidate should also be granted Validity Certificate. But still, the Claims were rejected by the Committee on the ground that the claim of each of the candidates is to be decided on its own merits.

It was also noticed that though the Hon'ble Apex Court in the case of Anand .vs. Committee for Scrutiny and Vertification of Tribe Claims and Others reported in (2011) Mh.L.J. 919 has held that the entries in the preconstitutional documents have more probative value and if a candidate has such documents of his fore-fathers, then the claim of such candidate cannot be rejected. Even in such cases, as a matter of routine, the claims were rejected.

In the affidavit, the Commissioner has tried to put blame on the Court stating there that since there are conflicting Judgments by various Benches of this Court, there is a confusion amongst the Members of the Committee. In the affidavit, a suggestion is also sought to be given by naming one of us i.e. B.R.Gavai, J that he is also party to one of such conflicting Judgments.

The Commissioner has also sought to take an umbrella, on the pretext that since there is conflict in the views taken by the Division Benches of this Court in the case of Apoorva d/o.

Vinay Nichale (supra) and the Judgment of Division Bench of this Court in the case of Shweta Ramlal Ghunavat .vs. State of Maharashtra and Others, dt.25.11.2011 (Writ Petition No.10144 of 2011).

We find that there is no such conflict as sought to be projected by the learned Commissioner. The ratio laid down in the case of Apoorva d/o. Vinay Nichale (supra) will have to be considered as laying down a proposition that when a particular member in a family has been granted Validity Certificate after going through the rigour of scrutiny including enquiry by Vigilance Cell, then the brother, sister, father and mother of such a candidate should not be required to go through the rigour of such scrutiny again.

By no stretch of imagination, the ratio in the case of Apoorva d/o. Vinay Nichale (supra) could be said to be holding that even when validity is granted to the candidate without following the procedure prescribed i.e. Vigilance Cell etc; even in such cases, the kith and kiln of a person who is granted validity, such person should also be granted Validity. The Division Bench in the case of Shweta Ramlal Ghunavat (supra) though has referred to the earlier Judgment in the case of Apoorva d/o. Vinay Nichale, (supra), the ratio laid down therein is that when the Validity Certificate is granted without following the procedure as prescribed by law, then merely because validity is granted to the family member of a candidate, it would not bind the Members to grant validity to other members of the family.

It could thus be seen that if the Authorities correctly apply the law, there should be no confusion in their minds. When the validity is granted to one of the members of the family after entire procedure was followed including Vigilance Cell, home inquiry etc., then again requiring the brother, sister, father and mother etc. of such a candidate to go through the same procedure would unnecessarily burden the work of the Committee, inasmuch as the material to be considered against the members of the family would be the same.

However, if on erroneous presumption or erroneously construing the documents and without undergoing the process of scrutiny, vigilance etc. validity is granted to a member in the family, then such a Validity Certificate will not ipso facto entitle other members of the family to claim Validity Certificate on the basis thereof. In such a case, the Committee will be fully justified in holding de novo enquiry if it is found that the claim of such candidate is not supported by documentary evidence and there are contra documents available in denying the claim of such a candidate.

* * * *

However, in spite of there being voluminous documents prior to the presidential order being promulgated showing the caste/tribe to be 'Mana', denying Validity Certificate to such candidates on the ground that the documents does not mention the caste/tribe as 'Mana' Scheduled Tribe, in our view, is nothing but an attempt to deny the benefit of validity to the deserving candidates. By no stretch of imagination, the forefathers of

the candidates in the years 1920 or 1921 would have imagined that after 30 years the presidential order would be promulgated and they would be described as Scheduled tribe and therefore, they should write Scheduled Tribe after their particular Tribe/Caste."

23. On considering the above ratios and the facts of the present case, the impugned order shows that eight documents have been considered by the Committee. In its opinion the entry "Mana" as recorded in the said documents could not be indicative of the social status of the person as that of a tribe. However, in view of the reasons recorded herein above, we are of the opinion that the reasons stated by the Committee in the instant case for rejecting the eight documents are fallacious. The discussion made herein-above would persuade us to conclude that the entry recorded in the documents relating to the status of the forefathers of the Petitioner as "Mana" reflect the caste of the Petitioner as "Mana" and not to any other caste or sub-caste or group. Therefore, in such a case over-whelming documentary evidence will have greater corroborative value as held in the case of ***Anand Vs. Committe for Scrutiny and Verification of Tribe Claims and other, reported in (2011) Mh. L.J. 919*** . In this view of the matter, the impugned order is arbitrary, illegal and therefore deserves to be quashed and set aside.

24. The impugned order is hereby quashed and set aside. Respondent no. 1-Committee is directed to issue validity certificate to the Petitioner as belonging to “Mana” Scheduled Tribe within a period of eight weeks from the date of receipt of this order.

25. Rule is made absolute in the above terms. No orders as to costs.

JUDGE JUDGE

RR Jaiswal