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

WRIT PETITION NO.3764 OF 2013

Petitioner : Aparna d/o Ramdas Shrirame,
Aged about 19 Yrs., Occu. Student,
R/o. Khapri, Post - Doma,
Tah. Chimur, Distt. Chandrapur.

-- Versus --

Respondents : 1] The Chairman,
Scheduled Tribe Caste Certificate
Scrutiny Committee, Gadchiroli.

2] The Directorate of Higher Education,
Maharashtra State, Pune.

3] The Maharashtra State Education Research &
Training Council, Pune,
through its Competent Authority.

4] The Commissioner,
Maharashtra State Examination Council, Pune.

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Ms. Preeti Rane, Advocate for the Petitioner.
Shri A.M. Joshi, A.G.P. for Respondent Nos.1 to 3.
Shri P.B. Patil, Advocate for Respondent No.4.
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CORAM : **V.M. DESHPANDE & S.M. MODAK, JJ.**

DATE : **24th FEBRUARY, 2020.**

ORAL JUDGMENT : (Per S.M. Modak, J.)

01] Still Hon'ble Apex Court and this Court has laid down the law in various cases, caste/tribe certificate scrutiny committees has repudiated the caste/tribe claims in various cases. And that too on

same age old reasons of area restriction, Mana tribe being included in special backward category and for want of affinity test. For this attitude of the committee, we are required again to reiterate the law, which has been interpreted in celebrated cases.

02] We have heard learned Advocate Ms. Preeti Rane for petitioner, learned Assistant Government Pleader Shri A.M. Joshi for respondent Nos.1 to 3 and learned Advocate Shri P.B. Patil for respondent No.4. Ms. Preeti Rane vociferously put forth her points. With their assistance, we have gone through the order dated 10/06/2013 passed by respondent No.1-Scrutiny Committee, Gadchiroli. All of them have taken us through the record. We have no hesitation in setting aside the decision for the reasons given hereinafter.

03] The petitioner is resident of Chimur Taluka of Chandrapur District. After initial schooling, she is pursuing Diploma in Technical Education (D.T. Ed. Course) in respondent No.2-College. After taking admission on reserved seat as a member of Mana community, her tribe certificate was sent for verification. As per rules, vigilance inquiry was carried out. Report went against her. She was heard. Before the committee, she relied upon in all 8 documents. Three of them pertain to her. Where as 2 each pertain to her father and

grand father. Her cousin Sachin is holder of caste validity certificate (on which petitioner is not relying).

ABOUT MANA AS SCHEDULED TRIBE CATEGORY

04] Mana Scheduled Tribe community is included in the list in the year 1956. It is a matter of record. Still committee went on to observe *"Further Mana community was included in the list of ST for the first time in the year 1960 in specified Scheduled area only"* (page 16). This is not to correct position. This court has reiterated the history in case of Gajanan s/o Pandurang Shende vs. Head-Mastger, Govt. Ashram School, Dongargaon Salod & others, reported in 2018(2) Mh.L.J. 460 (Para No.5 is relevant). Initially entry No. 12 was dealing with Gond. But in the year 1956, original entry No.12 was substituted. Mana was specifically included in cluster of tribes. Later on in the year 1976 entry No. 12 was substituted by entry No. 18 and area restriction was also removed. Even if this position is clear, committee wrongly opined that Mana was included in the Scheduled Tribe order in the year 1960.

ABOUT DOCUMENTS

05] Amongst 10 documents, only 2 documents are prior to 1956. One is P-1, revenue extract in the name of Lakshman Muka

Shrirame. He is cousin great-grandfather father of the petitioner and it is for the year 1920-23. Lakshman Muka is shown as 'Kastakar' and caste Mana is mentioned therein. Real great-grandfather is Manya Muka and Lakshman is his brother. Family tree is not disputed. Second document is a sale deed dated 7th April, 1956 executed by Narayan Manaba Shrirame (who is real grandfather of the petitioner). Mana caste is mentioned therein.

06] On one hand, the committee has overlooked these two documents and on the other hand laid emphasis on absence of reference of 'Mana' tribe in other documents. It is but natural that prior to 1950, reservation policy was not in force and hence there is no insistence on reference of caste/tribe in the documents. It is true that there are persons belonging to 'Maratha Mana', 'Kunbi Mana', 'Badwaik Mana' etc.. Admittedly during vigilance enquiry no such documents is collected which shows that the petitioner belongs to that sect of 'Mana' community (other than 'Mana' Scheduled Tribe community). This is what has been held precisely in case of Gitesh s/op Narendra Ghormare vs. Scheduled Tribe Certificate Scrutiny Committee, Nagpur & others, reported in 2018(4) Mh.L.J. 933.

"If on interpretation of entries in the document, it is held that the entries of 'Kshatriya Mana', 'Badwaik Mana',

‘Maratha Mana’, ‘Kunbi Mana’ etc., the claim cannot be validated” (paragraph 24).

But in absence of such entries, Committee concluded that petitioner does not belong to Mana scheduled tribe. It is wrong.

AREA RESTRICTION

07] It is true that prior to removal of area restriction in the year 1976, Mana community from certain Districts of Vidarbha is only recognized as Scheduled Tribe. At that time even if Mana Tribe member outside those areas is not recognized. In order to remove the discrimination, this area restriction is removed. Still if the committee says that petitioner does not hale from particular area, such finding is against the constitutional mandate. This reasoning needs to be set aside.

AFFINITY TEST

08] It is true that Affinity Test is one of the paramount consideration while deciding Tribe Claim. This is what has been held by the Full Bench of this Court in case of Shilpa Vishnu Thakur vs. State of Maharashtra & others, reported in 93 BCR 497 After this decision, the Hon’ble Supreme Court dealt with this issue in case of Anand vs. Committee for Scrutiny and Verification of Tribe Claims &

others, reported in 2011(6) Mh.L.J. 919. If there are pre-constitutional documents, it has greater probative value. Due to modernization and urbanization, there is a change in traits and customs. So, much importance cannot be given to affinity test. This interpretation still holds good.

CONCLUSION

09] For the above discussion, we disagree with the reasoning and conclusion drawn by the committee. We are inclined to accept petitioner's claim. Hence we proceed to pass the following order.

ORDER

- I. The writ petition is allowed.
- II. The order dated 10/06/2013 passed by Respondent No.1-Scrutiny Committee is set aside.
- III. Respondent No.1 - Scrutiny Committee is directed to issue to petitioner-Aparna d/o Ramdas Shrirame Tribe Validity Certificate as a member of 'Mana' Scheduled Tribe.
- IV. The Certificate be issued within two months from today.
- V. With these observations, the rule is made absolute in the above terms with no order as to costs.

(S.M. MODAK, J.)

(V.M. DESHPANDE, J.)

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