



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

WRIT PETITION NO. 4236 OF 2013

Pallavi D/o Ramesh Mundhare
Aged about 18 years, Occu. Student,
R/o Nehru Nagar, Ward No. 4,
Distt. Chandrapur.

..... PETITIONER

... Versus ...

1. The Scheduled Tribe Caste Certificate
Scrutiny Committee, Gadchiroli,
through its Chairman.
2. The Principal,
Janta Mahavidyalaya, Chandrapur.
3. The Chairman,
Maharashtra State Board of Secondary &
Higher Secondary Education, Pune,
Nagpur Divisional Board.

..... RESPONDENTS

Smt. Preeti D. Rane, Advocate for the Petitioner.
Shri A.A. Madiwale, A.G.P. for Respondent No.1.
Shri PB. Patil, Advocate for Respondent No.3.

CORAM : V.M. DESHPANDE & S.M. MODAK, JJ.
DATED : 25/02/2020

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

This is the one more instance wherein the Scheduled
Tribe Scrutiny Committee, Gadchiroli repudiated the tribe claim of

the petitioner as a member belonging to 'Mana' Scheduled Tribe. It was rejected mainly for the reason that-

- a) the petitioner hails from an area which is not notified for 'Mana' Scheduled Tribe community;
- b) as the documentary evidence relied upon by the petitioner does not support her claim as a member of Scheduled Tribe community and;
- c) for failure to pass the affinity test.
- d) This decision was taken on 7th June, 2013. Its correctness is challenged before us.

02] We have heard Smt. Preety D. Rane, learned counsel for the petitioner. Shri A.A. Madiwale, learned Assistant Government Pleader argued for respondent No.1, Shri P.B. Patil, learned counsel argued for respondent No.3. No one appeared for respondent No.2, though served. With their assistance, we have perused the record and citations relied upon by the learned counsel for the petitioner.

03] On going through it, we are convinced that the Committee has committed an error in rejecting the claim. The Committee has wrongly observed that old documents do not depict the status of the petitioner as 'Scheduled Tribe' community. The Committee has overlooked the fact that prior to independence, policy

of reservation was not there. The committee has overlooked the fact that area restriction was removed as per the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. The Committee has also overlooked the dictum given by the Hon'ble Supreme Court in the Case of **Anand Vs. Committee for Scrutiny & Verification of Tribe Claims and Others** reported in **2011(6) Mh.L.J. 919** about minimum importance to affinity test when per-constitutional documents are there.

04] In more than one cases, this Court has dealt with the issue of verification of tribe certificate issued to member of 'Mana' community. The law on this point, is no more *res integra*. The Government of Maharashtra has issued two Resolutions dated 24th April, 1985 and 15th June, 1995. The direction was given to treat the members of the 'Mana' community independent of 'Gond' tribe unless relationship is established. So also, the Government Resolution dated 15th June, 1995 has included 'Mana' community as Special Backward Class. There is challenge to all these resolutions in the case of **Mana Adim Jamat Mandal Vs. State of Maharashtra and Others** reported in **2003(3) Mh.L.J. 513**.

05] Finally, this Court concluded that members of 'Mana' community be given benefits of Scheduled Tribes. This Court dealt with Entry No.12 (Gond) "including" as "existing" in the Scheduled

Castes and Scheduled Tribes (Amendment) Act, 63 of 1956 and Entry No.18 of part IX of the Schedule to Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. It has been held that members of 'Mana' community cannot be included in Special Backward Class by the State Government. Mana community is included in Entry No.18. Amendment to Entry No. 18 can only be done by the Parliament as per the provisions of Article 342 of the Constitution of India.

06] The Hon'ble Supreme Court affirmed this decision in the case of *State of Maharashtra and Others Vs. Mana Adim Jamat Mandal* reported in *(2006) 4 SCC 98*. It has been held that there is a comma in between one entry and another entry. In Entry No. 18, every tribe must be deemed to be a separate tribe and not a sub-tribe of 'Gond'. Hence, 'Mana' is considered as separate Scheduled Tribe.

07] There was also an occasion for this Court to deal with the correctness of the findings recorded by the Committee thereby invalidating the tribe claim in the case of *Gajanan s/o Pandurang Shende Vs. Headmaster, Govt. Ashram School, Dongargaon Salod and Others* reported in *2018(2) Mh.L.J. 460*. There also, the Committee held that 'Mana' was included in the list in the year 1960, whereas, this Court considered the history. Initially, Entry No. 12 was there in the order. It was substituted in the year 1956. Members of

‘Mana’ community from a restricted area were only given the benefits. As we know, the area restriction was removed in the year 1976. In the case before us also, the Committee held that ‘Mana’ was included in the list in the year 1960 for the first time. It is wrong. In fact, it was included in the year 1956 itself.

08] In the case of *Gitesh s/o Narendra Ghormare Vs. Scheduled Tribe Certification Scrutiny Committee, Nagpur and Others* reported in *2018(4) Mh.L.J. 933*, there was an occasion for this Court to deal with the decision of the Committee in which the Committee has repudiated the claim due to difference in the description ‘Mane Ku’, ‘Mana Ku’, ‘Ku Mana’, ‘Mana Kunbi’, ‘Patil Mana’, ‘Mane’, ‘Mani’, ‘Kunbi’, etc. in the documents. This Court held that “interpretation of Caste or Tribe entries in the constitution order is prohibited”. It has been held that “if there are hundred documents containing different kinds of entries e.g. ‘Mana’, ‘Mane’, ‘Mani’ etc., it is the duty of the Court to ascertain the dominant entries having greater probative value”. What is prohibited is that the entry ‘Mana’ in the order does not include or exclude the entries like ‘Mana’ ‘Kunbi’, ‘Kshatriya Mana’, etc.

09] If we apply the principles to this case, we can find that the petitioner has produced transfer certificate of Janba Donu Mundhare. It is issued on 17th June, 1963. The caste is mentioned as

‘Mana’. His date of birth is 25th December, 1944. As per the family tree, grand-father of the petitioner is one Maroti and said Janba is the brother of said Maroti. It means, Janba is the cousin grand-father of the petitioner. The family tree is not disputed by the Committee.

10] In fact, in the letter dated 6th February, 2013 addressed by the Committee to the petitioner, Janba is referred to as cousin grand-father of the petitioner. The vigilance cell has collected Daakhil Kharij Register of said Janba from the Zilla Parishad Primary School, Chandrapur. The date of birth shown is 25th December, 1944. Caste is mentioned as ‘Mana’. It is important to note that the entry in Daakhil Kharij Register mentions the date of admission i.e. 1st April, 1953. The policy of reservation was not in force for ‘Mana’ community at that time. Hence, it may not be proper to refuse this entry for the reason that in that certificate, there is no reference of Scheduled Tribes. As held in the case of **Anand Vs. Committee for Scrutiny & Verification of Tribe Claims and Others** reported in **2011(6) Mh.L.J. 919**. Pre-constitutional documents have a greater probative value. The committee has overlooked this fact.

11] Hence, we feel that the petitioner has made out a case for grant of tribe validation certification. There is no point for refusing the claim simply for the reason that her father has not

obtained validation tribe certificate. We are inclined to interfere in the order. Hence the following order:-

ORDER

- i. The petition is **allowed**.
- ii. The decision dated 7th June, 2013 taken by respondent No.1-Committee is set aside.
- iii. Respondent No.1-Committee is directed to issue tribe validation certificate to the petitioner - Pallavi D/o Ramesh Mundhare as a member of 'Mana' Scheduled Tribe community within two months from the receipt of this order.
- iv. Rule is made absolute in the above terms. No order as to costs.

JUDGE

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