



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

**Writ Petition No. 1307 of 2020**

Ku. Sneha D/o Vitthal Chaudhari,  
Aged about 24 Years, Occupation : Student,  
R/o At Kitadi (M), Post Hirapur,  
Tq. Chimur, District : Chandrapur.

... Petitioner

*// Versus //*

The Schedule Tribe Caste Certificate  
Scrutiny Committee, through its  
Member Secretary and Deputy  
Director, Gadchiroli.

... Respondent

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Shri Ashwin Deshpande, Advocate for the petitioner  
Mrs. M. S. Naik, AGP for the respondent  
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**CORAM : A. S. CHANDURKAR AND**  
**N. B. SURYAWANSHI, JJ.**

**DATE : 26/10/2020**

**JUDGMENT** (Per :N. B. SURYAWANSHI, J.)

Rule. Rule made returnable forthwith.

2. Heard by consent of learned counsel for the parties.

3. By this petition filed under Article 226 and 227 of the  
Constitution of India, the petitioner challenges the order passed by the

respondent - Schedule Tribe Caste Certificate Scrutiny Committee, Gadchiroli (for short 'Committee') thereby invalidating the caste claim of the petitioner belonging to 'Mana', Scheduled Tribe and consequently cancelled the caste certificate dated 18-6-2011 issued by the Sub Divisional Officer, Warora.

4. The petitioner claims to be belonging to 'Mana', Scheduled Tribe which is at entry serial no. 18 in the Constitutional Scheduled Tribe Order, 1950 in relation to the State of Maharashtra. The proposal of the petitioner for verification of her caste certificate was submitted to the respondent on 12-7-2011 through proper channel. Before Committee, the petitioner relied upon total 9 document in support of her claim. The Committee invalidated the claim and hence, the present petition.

5. Learned Advocate for the petitioner submitted that the Committee was not justified in rejecting entry of caste 'Mana' in the revenue record of great grandfather of the petitioner which pertains to year 1919-1920. On this document alone, the Committee ought to have allowed the caste claim of the petitioner. The Committee also erred in holding that the petitioner has failed in affinity test and that forefathers of the petitioner were not residing in the tribal area where 'Mana'

tribal people used to reside. On the ratio in the case of ***Gajanan s/o Pandurang Shende Vs. Head Master, Govt. Ashram School, Dongargaon Salod and ors.*** reported in ***2018(2) Mh.L.J. 460***, the learned Advocate for the petitioner contends that the petition deserves to be allowed.

6. On the other hand learned Assistant Government Pleader supports the impugned order passed by the Committee submitting that the Committee has assigned proper reasons for the conclusions arrived at. The Committee has rightly discarded the document i.e. revenue record of the year 1919-1920 as the same does not mention that Soma was a tribal. The petitioner has failed in the affinity test and the forefathers of the petitioner were not residing in the area where tribals belonging to 'Mana' tribe used to reside. The Committee has rightly relied upon the decisions of this Court as well as the Apex Court and no fault can be found with the decision rendered by the Committee.

7. Heard learned Advocate for the petitioner and the learned Assistant Government Pleader for the respondent. Perused the writ petition along with annexures and vigilance cell report. Learned Assistant Government Pleader has made available original record of the Committee. We have perused the same.

8. In support of her caste claim, the petitioner has relied upon the revenue entry of Land Gat No. 61/2 of Mouza Kitadi (Matade), Tahsil Chimur, District Chandrapur, which was owned by great grandfather of the petitioner namely, Soma S/o Nadu wherein his caste is recorded as 'Mana'. The Committee has refused to rely on this document on the ground that in this document there is no endorsement under Section 36 and 36 A of the Maharashtra Land Revenue Code (MLR Code) to the effect that the land holder is a tribal and transfer of land is prohibited. The Committee has failed to appreciate that MLR Code is enacted in the year 1966. Such endorsement in terms of Section 36 and 36 A of the MLR Code could not have been made in the year 1919-1920. There was no occasion to record that Soma was tribal and transfer of land is prohibited in the year 1919-1920. It is not the requirement of law that unless there is a endorsement as 'tribal' in the revenue record, the said document cannot be relied upon for caste verification purposes. The fact remains that caste of great grandfather, Soma is recorded as 'Mana' in the revenue record of the year 1919-1920. The relationship of the petitioner with Soma is not disputed. The vigilance cell has verified this document and this document was furnished to the petitioner along with show cause notice calling upon the petitioner to submit reply to the vigilance report. So the Committee has not disputed the genuineness of

this document. The document is of pre-Independence era and hence has greater probative value. The Committee has therefore misdirected itself in discarding this document.

9. In respect of the documentary evidence relied upon by the petitioner, the Committee has observed that “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 1919-1920 to 2009. However, 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, Badawaik Mana, Khad Mana, Kshatriya Mana, Rawad Mana, Kunbi Mana, Mani/Mane etc. ...” In **Gajanan** (supra), this Court held :

*18. Applying the law laid down in E.V. Chinnaiah's case, it has to be held in the facts of the present that once it is clear that 'Mana' community is included in entry No.18 of the Constitution(Scheduled Tribes) Order, it has to be read as it is, representing a class of 'Mana' as a whole and it is not permissible either for the Executive or for the Scrutiny Committee to artificially sub-divide or sub-classify 'Mana' community as one having different groups, like 'Badwaik Mana', 'Khand Mana', 'Kshatriya Mana', 'Kunbi Mana', 'Maratha Mana', 'Gond Mana', 'Mani/Mane',etc., for the purposes of grant of benefits available to a recognized Scheduled Tribe. To exclude such persons from the entry 'Mana', to be recognized as Scheduled Tribe, amounts to*

*interference, rearrangement, re-grouping or re-classifying the caste 'Mana', found in the Presidential Order and would be violative not only of Article 342, but also of Article 14 of the Constitution of India. The classification of entry 'Mana' indifferent categories, like 'Badwaik Mana', 'Khand Mana', 'Kshatriya Mana', 'Kunbi Mana', 'Maratha Mana', 'Gond Mana', 'Mani'/'Mane', etc., for the purpose of conferring a status as a recognized Scheduled Tribe is artificial and without any authority. The Committee has, therefore, committed an error in rejecting the claim by holding that the documents produced simply indicate the caste 'Mana' and not 'Mana, Scheduled Tribe'.*

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. 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.*

10. In view of the above ratio, the Committee was not justified in rejecting the documents relied upon by the petitioner on the ground that 'Mana, S.T.' is not written in the documents. The Committee ought

to have given due importance to the document of pre-independence period of the year 1919-1920 of Soma wherein his caste is mentioned as 'Mana' and ought to have allowed the tribe claim of the petitioner.

11. The Committee by placing reliance on the vigilance report has held that the petitioner has failed in the affinity test. The legal position on this point is settled by the decision of the Hon'ble Apex Court in the case of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and ors.** reported in **2011(6) Mh.L.J. 919** wherein it is held :

18. *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 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, 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 tribes' 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.*

In view of the above observations, failure in affinity test can not be a ground available for the Committee to refuse caste claim of the petitioner.

12. The conclusion of the Committee that forefathers of the



petitioner did not hail from the area where 'Mana' tribals used to reside is also not sustainable in the light of following observations of this Court in the case of **Gajanan** (supra).

*"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 requirements of ordinary place of residence in tribal areas and migration to non-tribal areas, was done away with."*

13. In the light of aforesaid reasons, the conclusions recorded by the Committee cannot be sustained. The reasoning given by the Committee while rejecting the caste claim of the petitioner is erroneous and the same is in ignorance of settled legal position. The Committee has committed an error in lightly brushing aside pre-independence era document of the year 1919-1920 which has higher probative value. The Committee ought to have allowed the claim of the petitioner. We are of the considered opinion that the impugned decision of the Committee is unsustainable in law and facts of the case and the petitioner is entitled for the reliefs claimed in the petition. Hence, we pass the following order.

- (i) Writ petition is allowed.
- (ii) The impugned order of the Scheduled Tribe Certificate Scrutiny Committee, Gadchiroli dated 31-5-2014 at annexure P-1 of petition is hereby quashed and set aside.
- (iii) The respondent - Committee is directed to issue caste validity certificate of 'Mana, Scheduled Tribe' in favour of the petitioner, within a period of four weeks from the date of communication of this order.
- (iv) Rule is made absolute in the above terms with no order as to costs.

**JUDGE**

**JUDGE**

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