

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

WRIT PETITION NO.1250 OF 2020

Mamta w/o Ratnakar Gaikwad
(Asha d/o Champat Dhok),
Aged about 38 years,
Occ. Farmer,
R/o At Bhikund,
Post – Amdi, Tah. Chimur,
Distt. Chandrapur.

... Petitioner

Versus

1. The Vice-Chairman/Member-Secretary,
Scheduled Tribe Caste Certificate
Scrutiny Committee,
Gadchiroli.
2. The Collector,
Chandrapur.
3. The Tahsildar,
Chimur,
Distt. Chandrapur.
4. The Secretary,
Gram Panchayat, Bhikund,
Tah. Chimur,
Distt. Chandrapur.

... Respondents

Ms Preeti D. Rane, Advocate for Petitioner.
Ms Kalyani Deshpande, AGP for Respondent Nos.1 to 3.

CORAM : NITIN JAMDAR & ANIL S. KILOR, JJ
DATE : 20 JANUARY 2021

ORAL JUDGMENT : (Per Nitin Jamdar, J.)

Rule. Rule made returnable forthwith. Respondents waive service. Taken up for disposal.

2. By order dated 4 March 2020, notices for final hearing were issued to the Respondents. The learned AGP appears for the Respondent Nos.1 to 3. The Registry has endorsed that the Respondent No.4 is served.

3. It is not necessary to detail the facts of the case in view of the order dated 17 June 2019 passed by this Court in Writ Petition No.5329 of 2018 directing issuance of validity certificates to the near relatives of the Petitioner as belonging to “Mana - Scheduled Tribe”.

4. The Petitioner sought to contest the elections for the Gram Panchayat Bhikund, Tahsil Chimur, District Chandrapur, held in the month of August 2015. The Petitioner came to be elected as Member of the Gram Panchayat from a seat reserved for a Scheduled Tribe Candidate. Since, the Petitioner’s caste claim was not being decided, the Petitioner filed a Writ Petition bearing No.4031 of 2016, which was disposed of on 28 July 2016, and the Respondent- Scrutiny Committee was directed to decide the claim within fifteen months.

5. The Scrutiny Committee considered the caste claim of the Petitioner as belonging to “Mana - Scheduled Tribe” alongwith two other applicants, i.e. Tejaswini Narayan Dhok and Anant Narayan Dhok, who are the paternal cousins of the Petitioner. The Scrutiny Committee passed a composite order in respect of three claims. The common evidence was considered, and by order dated 28 June 2018, the Scrutiny Committee invalidated the caste certificate of the Petitioner issued on 13 August 2010 as belonging to “Mana Scheduled Tribe”. The caste certificates of Tejaswini Dhok and Anant Dhok were also invalidated. The Petitioner has placed on record the order dated 17 June 2019 passed by the Division Bench of this Court in Writ Petition No.5329 of 2018 filed by Tejaswini Dhok and Anant Dhok challenging the very same impugned order dated 28 June 2018 passed by the Scrutiny Committee.

6. We have gone through the order of the Scrutiny Committee. The Scrutiny Committee considered the claims of all the three cousins of the Petitioner together with the same evidence and the caste claims were invalidated. The Division Bench in order dated 17 June 2019 passed in Writ Petition No.5329 of 2018 observed thus,

“6. We have gone through the impugned order and also the documents placed on record. We find that there is a pre-constitutional document which is a birth certificate of one Kaurav Doma Mana, paternal grand-father of the Petitioners issued on 31st July 1938. There is no dispute

about the relationship of the Petitioners with Kaurav Doma Mana and the dispute is regarding the contents of this document. According to the Respondent No.1-Scrutiny Committee, this document does not show caste of the person named therein, and therefore, the Respondent No.1 - Scrutiny Committee has treated this document as having no probative value. We would disagree with the Respondent No.1 – Scrutiny Committee and also learned AGP for the State.

7. *It is well known that as there were no reservations before 1950, and the documents created or entries taken in the Government record in those days did not specifically mention the social status of the persons named therein. Sometimes, this record referred to castes of the persons in a specific manner and sometimes, they did not do so and it was only a matter of individual practice. This fact has also been taken cognizance of by taking judicial notice by another Division Bench of this Court in the matter of Gajanan Pandurang Shende V/s Head-Master, Govt. Ashram School, Dongargaon Salod and others, reported in 2018(2) Mh.L.J. 460. So, just because there is no mention of caste before or after the word 'Mana' appearing in the document dated 31st July 1938, it could not be said that this word 'Mana' cannot be taken as caste of Kaurav Doma. Infact, no one would dispute that there is no surname as 'Mana' and this word is only synonyms with caste or a status now described as 'Tribe'. Therefore, we find that the Respondent No.1 – Scrutiny Committee has committed perversity in ignoring admissible and relevant evidence. We accept this document, a pre-constitutional document as showing the social status of the Petitioners as 'Mana' and as per the constitutional order, 1950, 'Mana' has been categorized as 'Scheduled Tribe'.*

8. *Now it is well settled law that the pre-constitutional documents have a probative value greater than the data collected in order to apply affinity*

test. If there is no doubt about the pre-constitutional documents, there would be no warrant for relying upon the affinity test. The affinity test would come in good stead as a corroborative piece of evidence and would not stand at a pedestal higher than the one on which the pre-constitutional documents stand, unless the documents are doubtful. Same view has been expressed by another Divisional Bench of this Court in the matter of Gajanan Pandurang Shende (cited supra) by relying upon a case of Anand V/s Committee for Scrutiny and Verification of Tribe Claims and others, reported in 2011(6) Mh.L.J. (S.C.) 919.

9. *In view of above, we find that the impugned order is perverse and illegal and deserves to be quashed and set-aside by allowing this Petition. Writ Petition is allowed.*

10. *Impugned order is quashed and set-aside.*

11. *Respondent No.1 – Scrutiny Committee is directed to issue validity certificate to the Petitioners, as they belonging to 'Mana' Scheduled Tribe within a period of four weeks from the date of receipt of this order.”*

7. The Division Bench in respect of the two cousins of the Petitioner set aside the same impugned order and directed that the validity certificates be issued to them. Accordingly, the validity certificates have been issued to the Respondent's cousins. Having taken the review of the same evidence in respect of a common order passed, to maintain a judicial consistency, we adopt the same view.

Judgment

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8. In view of above, we direct the Respondent No.1- Scrutiny Committee to take a decision to issue a validity certificate to the Petitioner, based on the view expressed by this Court, as quoted above, and the observations made in this Petition, within a period of four weeks.

9. The Writ Petition is accordingly disposed of. No order as to costs.

(ANIL S. KILOR, J)

(NITIN JAMDAR, J)

Lanjewar