



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION No.4072 OF 2013

Bhaskar s/o. Shioram Ghodmare,
Aged about 52 years,
Occupation : Agriculturist,
R/o. Lonkhairi, Post Navegaon,
Tahsil Sindewahi, District Chandrapur.

: PETITIONER

...VERSUS...

1. The Scheduled Tribe Certificate
Scrutiny Committee, Gadchiroli Division,
Nagpur, through its Member Secretary,
Gadchiroli.
2. Shri A.S. Gunjal, Vice Chairman,
The Scheduled Tribe Certificate
Scrutiny Committee, Gadchiroli.
3. Shri S.S. Chavan,
Member Secretary,
The Scheduled Tribe Certificate
Scrutiny Committee,
Gadchiroli.
4. Dr. R.D. Tribhuvan, Member,
The Scheduled Tribe Certificate
Scrutiny Committee, Gadchiroli.

Dr. R.D. Tribhuvan,
Member, Tribal Research & Training Institute,
28, Queen Garden,
Pune-411 001.
5. State of Maharashtra,
Through its Secretary,
Tribal Welfare Department,
Mantralaya, Mumbai-32.

: RESPONDENTS

Petition is
dismissed against
Respondent No.2
vide Registrar
(Judicial) order
dated 23.3.2016.

Amendment carried
out as per Court's
order dated
27.9.2013.

Shri P.R. Parsodkar, Advocate for Petitioner.
Shri S. Dangre, Advocate for Respondent No.1.
Ms. T.H. Khan, Assistant Government Pleader for Respondent No.5.

CORAM : A.S.Chandurkar & Urmila Joshi-Phalke, JJ.

DATE : 22nd September, 2022.

ORAL JUDGMENT : (Per : Urmila Joshi-Phalke, J.)

1. Heard learned counsel for the parties.
2. Rule. Rule made returnable forthwith.
3. The petitioner, who is permanent resident of Lonkhairi, Post Navegaon, District Chandrapur claims to be “Mana”. As per his contentions he was recorded as “Mana” in school record. He belongs to “Mana” Scheduled Tribe. Accordingly, entries were taken in his school record. His father Shri Shivram Duma is also recorded as “Mana” Scheduled Tribe as per Adhikar Abhilekh Panji. Similarly, his grandfather Duma Bhika and great grandfather Bhika were also recorded as “Mana”. The entry regarding his great grandfather Bhika is of pre-independence era of the year 1921-22 showing that his great grandfather Bhika was recorded as “Mana”. The caste certificate was issued to him by the Sub-Divisional Officer on 6.7.2011. His caste certificate was referred to the Caste Scrutiny Committee. The Caste

Scrutiny Committee referred the same for Vigilance Cell for conducting the inquiry. Accordingly, Vigilance Cell has submitted the report wherein also petitioner as well as his forefathers shown to be recorded as “Mana”. The Vigilance report also speaks about the affinity and nowhere it is claimed that petitioner failed to show affinity. Despite the Vigilance report dated 9.8.2012, which is in favour of the petitioner, the Caste Scrutiny Committee has invalidated the claim of the petitioner by passing order on 1.2.2013. The order passed by the Scrutiny Committee invalidating the claim of the petitioner is challenged in the present writ petition by the petitioner on the ground that the findings of the Caste Scrutiny Committee are perverse, arbitrary, illegal and liable to be set aside. The Caste Scrutiny Committee had not considered that there are consistent entries regarding that the forefathers of the petitioner as well as petitioner belongs to “Mana”. The Caste Scrutiny Committee failed to appreciate these facts and wrongly invalidated the claim. Therefore, the order passed by the Caste Scrutiny Committee deserves to be set aside.

4. In response to the notice the Caste Scrutiny Committee opposed the petition on the ground that the petitioner failed to prove the affinity test. It is the contention of the respondents that the order

passed by the Committee is justified one and no interference is called for. As per the contentions of the respondents, petitioner has failed to establish the affinity test and the ethnological linkages towards “Mana” Scheduled Tribe and therefore the Committee arrived at the conclusion that the petitioner do not belong to “Mana” Scheduled Tribe and passed the order invalidating the caste claim of the petitioner belonging to “Mana”. Hence, no interference is called for.

5. Heard Shri P.R. Parsodkar, learned counsel for the petitioner. He submitted that the Caste Scrutiny Committee had not considered the consistent entries as well as observations of the Vigilance report which shows that not only petitioner but his forefathers were recorded as “Mana”. It is specifically mentioned in the Vigilance report that there are pre-independence documents showing that petitioner’s forefathers belong to ‘Mana’. The Vigilance Committee had also recorded the statements of villagers. It reveals from the said statements that petitioner belongs to “Mana” and following the traditions and customs of “Mana” Scheduled Tribe, but the Scrutiny Committee had not considered the Vigilance report and the statements recorded and arbitrarily invalidated the claim. The order passed by the Scrutiny Committee is illegal, arbitrary, perverse and liable to be set aside. He further submitted that the family tree

submitted by the petitioner shows that Chintu is the great great grandfather of the petitioner, who has one son Bhika, who is the great grandfather, Bhika had one son Duma, who is grandfather and Duma has one son Shivram, who is the father of the petitioner. The agriculture assessment extract collected by the Vigilance Committee during the vigilance shows that Bhika Chintu was recorded as “Mana” of the year 2021-22. This document is not only submitted by the petitioner but collected by the Vigilance also. Said document is referred in the Vigilance report. The Vigilance Committee members have recorded statement of Aabaji Tukaram Mundhre, resident of Lonkhairi, who also stated that the petitioner belongs to “Mana” Scheduled Tribe and following the customs of the said “Mana” Scheduled Tribe. The post-independence entries in the name of sister of the petitioner show that she was recorded as “Mana”. Father of the petitioner was also recorded as “Mana”. Though there are consistent documents showing that since pre-independence petitioner’s forefathers are shown to be “Mana”. His claim is arbitrarily invalidated by the Committee without assigning any reason. The Committee has assigned the reason that the petitioner had not proved the affinity test. However, the statements recorded by the Vigilance Committee are sufficient to show that the petitioner successfully

proved the affinity test as it is established that the petitioner is following the customs and traditions of the “Mana” Scheduled Tribe. Therefore, the order passed by the Scrutiny committee deserves to be set aside.

6. In support of his contention he relied upon the case of **State of Maharashtra vs. Milind and others**, reported in (2001)1 SCC 4, **Mana Adim Jamat Mandal vs. State of Maharashtra and others**, reported in 2003(3) Mh.L.J. 513 and **Gitesh s/o. Narendra Ghormare vs. Scheduled Tribe Certificate Scrutiny Committee, Nagpur and others**, reported in 2018(4) Mh.L.J. 933. He submitted that it is held in *Mana Adim Jamat Mandal vs. State of Maharashtra and others* (supra) that the plain reading of Entry 18 in Part IX Maharashtra in Scheduled Castes and Scheduled Tribes Orders (Amendment) Act would show that Mana community is included in Scheduled Tribes and it is not permissible for the State Government or the Courts to deny the benefits available to the Scheduled Tribe community to the members belonging to the Mana community. In *Gitesh s/o. Narendra Ghormare vs. Scheduled Tribe Certificate Scrutiny Committee, Nagpur and others* (supra), it is held that, if there are number of documents containing different kinds of entries of caste/tribe like ‘Mana’, ‘Mane’, ‘Mani’, ‘Mana Kunbi’, ‘Kshatriya Mana’, ‘Khand Mana’,

‘Maratha Mana’ and so on, the duty of the Court will be to ascertain the dominant entries having greater probative value and record a specific finding of conclusive nature as to whether entries can be construed as ‘Mana Scheduled Tribe’, which is an entry in the cluster of tribes at Serial No.18 in the Constitution (Scheduled Tribes) Order. Merely because certain documents indicate entry of caste/tribe other than ‘Mana’ is not enough to reject the claim. The interpretation, clarification, explanation of the entries in the Scheduled Tribes Order is not permitted. He submitted that the petitioner had submitted pre-independence documents which show that forefathers of the petitioner were recorded as a “Mana”. Therefore, no reason for the Caste Scrutiny Committee to reject the claim. The petitioner had also passed the affinity test.

7. On the other hand, learned Assistant Government Pleader Ms. T.H. Khan, for the respondent No.5 submitted that the order passed by the Scrutiny Committee is justified in the light of the observation that the petitioner failed to prove the affinity test.

8. Heard both sides. Perused the record. The Caste Scrutiny Committee invalidated the claim of the petitioner on the ground that the petitioner failed to prove the affinity test and also failed to prove that he belongs to “Mana” Scheduled Tribe. As per contention of the

petitioner he belongs to “Mana” Scheduled Tribe and there are consistent entries showing that his forefathers belong to “Mana” Scheduled Tribe. The old documents which are placed on record by the petitioner as well as collected by the Vigilance during the Vigilance inquiry shows that Bhika Chintu is the great grandfather of the petitioner who was recorded as “Mana” in 1921-22. The grandfather of the petitioner was also recorded as “Mana”. Father and sister of the petitioner were also recorded as “Mana”. The petitioner relied upon the family tree which is submitted before the Caste Scrutiny Committee which shows that Chintu is the great great grandfather of the petitioner who had one son Bhika, who is the great grandfather of the petitioner. Said Bhika had one son Duma who is grandfather of the petitioner and Duma had one son namely Shivram. Petitioner is the son of Shivram. During the Vigilance inquiry Vigilance Committee had collected the documents including the agriculture land assessment extract of the year 1921-22 which shows that great grandfather of the petitioner was recorded as “Mana”, who was cultivating the land bearing No.329, admeasuring 1.83 R. Father of the petitioner Shivram was also recorded as “Mana” as per Dakhal Kharij Register extract of the year 1968 wherein birth date of the petitioner was shown as 6.11.1961. Thus, great grandfather as well

as father of the petitioner and petitioner all were recorded as “Mana”. The Vigilance report shows that grandfather of the petitioner was also recorded as “Mana”. The Vigilance Committee not only collected the documents but also recorded the statements of villagers. The Statement of Aabaji Tukaram Mundhre shows that petitioner belongs to “Mana” Scheduled Tribe and following the customs and traditions of the “Mana”. The Vigilance Committee invalidated the claim by observing that the Scrutiny Committee must be satisfied about the genuineness of the claim and the correctness of the Scheduled Tribe certificate. It is observed by the Committee that though the documents which are filed on record by the petitioner shows that the petitioner and his forefathers recorded as “Mana”, but the petitioner failed to prove the affinity test which would prove that petitioner belongs to “Mana” Scheduled Tribe. Admittedly, there are no Rules or any Code to test affinity as regards “Mana” Scheduled Tribe. All the assessments done and the documents on record shows that forefathers of the petitioner recorded as “Mana”. No contrary entry came forward before us which would suspect that the petitioner is not from the “Mana” Scheduled Tribe. Learned counsel for the petitioner relied upon the judgment of this Court in *Gitesh s/o. Narendra Ghormare vs. Scheduled Tribe Certificate Scrutiny Committee, Nagpur and others*

(supra) wherein it is observed that if there are number of documents containing different kinds of entries of caste/tribe like 'Mana', 'Mane', 'Mani' etc., merely because certain documents indicate entry of caste/tribe other than 'Mana' is not enough to reject the claim. The interpretation, clarification, explanation of the entries in the Scheduled Tribes Order is not permitted. The interpretation of entries in the documents cannot be confused with the interpretation entry in the Scheduled Tribes. It is further held by this Court that affinity test may not be recorded as litmus test for establishing link of applicant with the Scheduled Tribe. Affinity test is to be used to corroborate documentary evidence and it is not to be used as a sole criteria to reject claim. It is well settled that the greater reliance may be placed on pre-independence document because they furnished a higher degree of probative value to the declaration of status of a caste as compared to post-independence document.

9. Here in the present case not only the petitioner but the Vigilance Committee had also collected the relevant documents of pre-independence era which shows that after the name of the great grandfather of the petitioner the entry recorded was "Mana". There are no adverse entries regarding the tribe claim of the petitioner observed by the Vigilance Committee during the vigilance conducted.

The affinity test is also established on the basis of the statements of the villagers recorded by the Vigilance Committee. The statements of the villagers show that the petitioner who belongs to “Mana” Scheduled Tribe and following the traditions and customs of “Mana” Scheduled Tribe. As observed by this Court affinity test may not be recorded as litmus test for establishing link of applicant with Scheduled Tribe. The affinity test it is to be used to corroborate documentary evidence and it is not to be used as sole criteria to reject the claim. In the present case, the observation of the Caste Scrutiny Committee shows that the claim of the petitioner was invalidated only on the sole criteria of affinity test which is not permissible.

10. In the above facts and circumstances, the order passed by the Caste Scrutiny Committee is arbitrary, illegal and liable to be set aside. Therefore, we proceed to pass following order :

ORDER

- (i) Writ petition is allowed.
- (ii) The order passed by the Scrutiny Committee dated 1.2.2013 is set aside.
- (iii) It is declared that the petitioner has proved that he belongs to “Mana” Scheduled Tribe which is

Entry No.18 of the Constitution (Scheduled Tribes) Order, 1950.

- (iv) The Scrutiny Committee shall within a period of six weeks from the receipt of the copy of the judgment issue validity certificate to the petitioner.

11. Rule is made absolute in the aforesaid terms. No order as to costs.

(Urmila Joshi-Phalke, J.)

(A.S.Chandurkar, J.)

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