

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.698 OF 2006

Smt. Triveni d/o. Papaiya Golkonda
Age 54 years, Occ. Service,
R/o. House NO. 855, Subhash Peth,
Cantonment, Aurangabad.

.. PETITIONER/S

VERSUS

- 1] The State of Maharashtra
through the Secretary
Tribal Welfare Department,
Mantralaya, Mumbai-32.
- 2] The Scheduled Tribe Certificate
Scrutiny Committee, Aurangabad
Division, Aurangabad
(through its Member Secretary)
- 3] The Executive Magistrate
Aurangabad.
- 4] The Director of Libraries,
Maharashtra State,
Mumbai.

.. RESPONDENT/S

Mr. H.I. Pathan, Advocate for petitioner
Mr. V.D. Rakh, AGP for respondent No.1
Mr. P.P. More, Advocate for respondent no.2.

CORAM :- A.H. JOSHI &
SUNIL P. DESHMUKH, JJ.

DATE :- 1st July, 2013.

JUDGMENT [PER A.H. JOSHI, J.] :-

1] Rule. Rule made returnable forthwith.
Heard finally by consent of parties.

2] The petitioner was issued Tribe Certificate dated 19th/22nd September, 1992, Exhibit "D" to the petition. The claim of the petitioner is that she belongs to "Mannervarlu" scheduled tribe. The petitioner is serving in the employment of Government of Maharashtra. Her Tribe claim was referred to the Scrutiny Committee for verification. After scrutiny, the final order rendered by the Committee is adverse to the petitioner and hence this petition.

3] Heard at length. Perused the record and annexures to the petition.

4] The foundation of the challenge in the petition as averred in the petition and addressed before us, can be summarized as follows :-

[a] The adverse decision of the committee is rendered without considering the documentary evidence on record.

[b] The finding of the committee that the

petitioner has failed to prove the ethnic linkage and affinity to the tribe Mannerwarlu is erroneous.

[c] that, the petitioner and her sister wanted to rely upon antecedent documents which pertained to the year 1939 and 1955.

5] This court has perused the documents relied upon by the petitioner and has also seen the report of the Vigilance Cell (page 44 at Exhibit P); the application in the prescribed format in which detailed information is required to be furnished by the candidate (page 51 at Exhibit R); two antecedent documents at page 79 and 80 (translation at page 81); copy of birth register of Village Deolai at page 86 and judgment of the Scrutiny Committee.

6] Three aspects argued by the petitioner shall be dealt with hereinafter, one after another.

7] The first category of documents is in heading A, [Documents pertaining to the applicant] (at page 64). All the documents are contemporaneous. There is no unanimity in relation to the Tribe/caste of the petitioner

described therein. In two documents, it is mentioned as "Telagu", whereas, in two documents, it is mentioned as "Mannervarlu". Being contemporaneous documents, these documents do not possess any evidentiary value.

8] Another class of documents is mentioned in Category B, [Documents pertaining to the applicant's relatives etc.] at page 64, these are 11 documents in number.

[a] Document at Sr. No.1, is again a contemporaneous document and hence, does not have any evidentiary value.

[b] Document at Sr. No.11 is the School Leave Certificate of the petitioner herself and that too is a contemporaneous document.

[c] Documents at Sr. No.1 as well as 11 describe the petitioner's tribe as Mannervarlu. Document at Sr. No.11 may come to the help of the petitioner if the petitioner succeeds on other grounds in order to corroborate the evidence that may be in favour of the petitioner.

[d] In so far as the documents at Sr. Nos. 2 to 10 are concerned, none amongst these documents, pertained to any other paternal relations.

Petitioner has not shown that the persons shown with maternal relation are otherwise having paternal lineage. On this ground, none amongst these documents do relate in connecting the petitioner by proof of either their own caste or tribe or that the petitioner is entitled to claim to belong to Tribe Mannervarlu on account of lineal succession through either amongst them, or their being paternally cognate.

9] **AFFINITY AND ETHNIC LINKAGE :-**

The committee has recorded a finding in this regard which is seen at page 70 and 71 of the paper book. It would be useful to refer to the relevant text by quotation, which is as under :-

"Therefore, the committee come to the conclusion, that :

[1] She has utterly failed to prove her affinity and ethnic linkage towards Mannervarlu Scheduled Tribe.

[2] The applicant's family's customs culture are not related with Mannervarlu Scheduled Tribe.

[3] The applicant is basically

resident of Andhra Pradesh i.e. Migrated and not originally residence of Maharashtra State.

In brief whatever information has been furnished by the candidate about traditional occupation, god/goddesses, surnames and customs is not associated to Mannervarlu Scheduled Tribe.

In view of the above discussion and after considering all the documents and information furnished by the candidate as well as considering the enquiry report, the Scrutiny Committee deeply /minutely observed and studied all the documents furnished by the candidate regarding her tribe claim, the scrutiny committee came to the conclusion that the candidate does not belong to Mannervarlu, Scheduled Tribe. Hence the following order is passed."

[quoted from order passed by the Scrutiny Committee dated 27th May, 2005.]

10] The petitioner has challenged the finding quoted in foregoing paragraph by averments contained in the petition at para 17, the relevant portion, reads thus :-

"The petitioner submits that, in the proforma filled in by her, she has clearly mentioned the rituals, deities, custom of Mannervarlu, Scheduled Tribe. However, her claim is rejected on this ground without specifically mentioning as to which customs, rituals etc. mentioned her do not relate to or associated to Mannervarlu Scheduled Tribe. The respondents ought to have understood that on specific mention in reply to show cause regarding this point. The committee ought to have clarified as to what exactly their criteria for comparing the customs, gods/goddesses, rituals, tradition etc. and ought to have afforded opportunity to the petitioner to clarify them. However, just for the sake of invalidating the petitioner's claim, the impugned order has been passed on surmises and conjectures. The petitioner submits that, the committee has erroneously held that, petitioner does not belong to the scheduled tribe."

[quoted from para.17 of the writ petition]

11] In order to test, as to whether the challenge raised by the petitioner can be sustained, this court has to look into the information furnished by the petitioner in the

prescribed format.

Copy of the said format is placed by petitioner on record at Annexure "R", at page 51. Crucial information which would establish, at least as an averment as regards, the ethnic linkage of the petitioner, is as follows :-

[a] Trace of origin of the applicant :-

Shri Rajkumar
Golkonda, Surbhi
Apartment, Durgabai
Deshmukh Colony, Near
Usmania University,
Sikandarabad.

[b] Dialect of the tribe : Telagu.

[c] Deities Rituals etc : -
Traditional deities of
the tribe :- Yallumma, Chochayya,
Renuka Devi of Mahur,
Bangari Mhaisma,
Balaji, Ganpati Mauli.

[d] Family Deity :- Bangari Mhaisma

[e] Traditional festivals
of the tribe. :- Holi, Nagpanchami,
Ashadhi Pooja, Pola,
Dusherra, Diwali,
Mahashivratri.

[Translated from Exhibit R, i.e. information given by the applicant to the committee

12] It is seen that the petitioner has also submitted a detailed representation before the committee which at Annexure "S", Page, 56 of the petition. This reply contains criticism against the report of the Vigilance Cell and a list of the evidence relied upon by the petitioner. Apart from this, the reply does not reveal the details as to how the petitioner claims ethnic linkage or affinity to the tribe Mannervarlu.

13] This court would like to see the additional evidence, now relied upon by the petitioner. The document of sale, which is an unregistered document wherein Papayya Balraj is described as belonging to Mannervarlu. In the birth extract register as well, name of child Kamlabai born to Balraj, is mentioned as Mannerwarlu.

14] These two documents could very well be considered in aid to the primary proof as regards evidence of lineage to Mannervarlu Scheduled Tribe.

15] It is well settled, as laid down in "Kum. Madhuri Patil's case reported in AIR 1995 SC 94, that the decision as regards tribe claim is to

be based on affinity and ethnic linkage and not solely or sheerly on the basis of the documentary evidence.

16] If documents are antecedent and do prove the entry as regards Tribe, the record would certainly have weightage. However, documents in isolation do not operate to substitute the need of proof of tribe claim by primary evidence as to the tribe, i.e. proof of ethnic linkage and affinity.

17] In the result, the additional evidence relied upon by the petitioner does not help in any manner.

18] Affinity and ethnic linkage to the Tribe "Mannervarlu" are the only facts required to be proved by any claimant. On whatever is pleaded by the petitioner, nothing except making a claim that she belongs to Mannervarlu Scheduled Tribe is averred by her. The details as to worship, family deity and rights to be observed or followed during various family or religious functions given by the petitioner are too general in nature. The Scrutiny Committee which is comprised of persons having expertise in relation to judging the facts as to ethnic linkage or affinity have recorded that the traits and few incidences of affinity

relied upon by the petitioner do not match with the tribe "Mannervarlu". In the given situation, it would not be possible to arrive at a conclusion than one reached by the committee.

19] The petitioner has failed to show as to how and the circumstances in which the finding recorded by the committee is erroneous.

20] At the time of raising objection to the report of the Vigilance Cell, based on local enquiry etc. it would have been possible for the petitioner to raise whatsoever objections the petitioner wanted. A bare criticism against the report of the vigilance cell does not result in making out any point.

21] Therefore, in absence of proof of affinity and ethnic linkage, the judgment of the Scrutiny Committee holding that the petitioner has failed to prove her tribe claim does not call for any interference. The petition is devoid of merit.

22] In so far as petitioner's claim for protection of her service based on Government Resolution is concerned, the question pertains to service matter and may be dealt with by appropriate forum. The petitioner may, for that

purpose, represent to the Government and no alternate forum is necessary.

23] In the result, the writ petition is dismissed. No orders as to costs. Rule is discharged.

[SUNIL P. DESHMUKH, J]

[A.H. JOSHI, J]

grt/-.