



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

WRIT PETITION NO. 6104/2023

Mr. Pranal S/o. Chintaman Wagh,
aged about 23 years, Occ. Nil,
R/o. At. Post. Pandurna (Khurd),
Tah. Ghatanji, District Yavatmal.

....**PETITIONER**

...VERSUS...

1. Deputy Commissioner /
Member Secretary, The
Scheduled Tribe Certificate
Scrutiny Committee, Yavatmal,
Near Rangoli Ground, Shastri
Nagar, Yavatmal, District, Yavatmal.

2. Recruitment Section, HRDM
First Floor, Reserve Bank of
India, Mumbai Regional
Office, Shahid Bhagatsingh
Marg, Fort, Mumbai-400001

...**RESPONDENTS**

Corrected as per
order dated
11/11/2024.

Shri Ananta Ramteke, Advocate for petitioner
Shri N.R. Patil, AGP for respondent No.1/State.
Shri R.M.Bhangde, Advocate for respondent No. 2.

**CORAM : AVINASH G. GHAROTE AND
SMT. M.S. JAWALKAR, JJ..**

DATE OF RESERVING THE JUDGMENT : 27/09/2024

DATE OF PRONOUNCING THE JUDGMENT : 15/10/2024

JUDGMENT (PER SMT. M.S. JAWALKAR, J.)

Heard.

2. **Rule.** Rule made returnable forthwith.

3. Heard finally by consent of learned counsel appearing for the respective parties.

4. The present petition raises question to the order dated 19/06/2023 passed by the respondent no. 1 - the Scheduled Tribe Certificate Scrutiny Committee, Yavatmal (for short, 'the Scrutiny Committee'), thereby invalidating the tribe claim of the petitioner belonging to 'Mana' Scheduled Tribe (S.T.), which is enlisted at Sr. No. 18 of the Constitutional (Scheduled Tribes) Order, 1950. The Scheduled Tribe certificate was issued to the petitioner by the Sub-Divisional Officer, Kelapur, District Yavatmal. Though the petitioner in response to the advertisement for recruitment to the post of Assistant in the establishment of respondent no. 2 i.e. R.B.I. passed the examination and was selected for the post of Assistant reserved for S.T. category, however, his

name was not appearing in the select list published on 09/12/2022. The other selected candidates were already joined on 23/01/2023 on their respective post. Upon enquiry, the petitioner was advised to submit the original tribe validity certificate. The petitioner had submitted his proposal of the tribe claim for verification to respondent no. 1 – the Scrutiny Committee on 07/02/2023. As he was in receipt of the communication from the respondent no. 2 to submit the original tribe validity certificate by 14/06/2023, he filed Writ Petition No. 3590/2023 in this Court. As per prayer for interim relief, this Court had directed the respondent no. 2 that, the name of the petitioner shall not be deleted from the select list for the post of Assistant. During the pendency of Writ Petition No. 3590/2023, the respondent no. 1 on 19/06/2023 passed its final order and thereby invalidated the tribe claim of the petitioner.

5. The oldest document, which is submitted by the petitioner, is in respect of Ragho, great great grandfather of

the petitioner dated 23/01/1918. It is extract of birth register maintained by Kotwal. As per this extract, Ragho Wagh had delivered a female child on 23/01/1918. The entry 'Mana' is clearly reflecting in the said document. During the course of hearing by the Scrutiny Committee, the petitioner had also placed on record three more documents. One of them is in respect of Sadashiv Mana, which is of the year 1925, second is in respect of Chintaman Vishwanath Wagh dated 24/08/2022 and third is in respect of Vishwanath Sadashiv Wagh dated 04/01/2018. As such, it is contended that, the old documents ought not to have been discarded by the Scrutiny Committee, and reliance by the Scrutiny Committee on the entry of 'Mana Kunbi' in some documents, which are not the oldest one was clearly not justified. The petitioner submits that, the documents having great probative value were not considered for no reason by the Scrutiny Committee. Hence, the order passed by the Scrutiny Committee is liable to be quashed and set aside.

6. The learned counsel for petitioner relied on the following citations:-

1) *Manisha d/o Pundlik Dadmal Vs. The Vice-Chairman/Member Secretary, Scheduled Tribe Caste Certificate Scrutiny Committee, Gadchiroli and ors.* [Judgment of this Court in Writ Petition No.5481/2018, decided on 30/08/2018]

2) *Anand Vs. Committee for Scrutiny and Verification and Tribe Claims and ors.* [2011(6) Mh.L.J. 919]

7. The learned Asst. Govt. Pleader for respondent no. 1 contended that, the petitioner had submitted some documents, in which 'Kunbi' is mentioned, from which is evident that, the petitioner does not belong to 'Mana' S.T. The submission of the petitioner is vehemently opposed by the learned AGP that, whenever, a person shows his caste as 'Kunbi', it is likely that, he is only indicating the occupation and not the caste. It is submitted that, these documents are also having great probative value as they are of pre-Constitutional period. Therefore, the Scrutiny Committee rightly appreciated the evidence before it and passed an appropriate order.

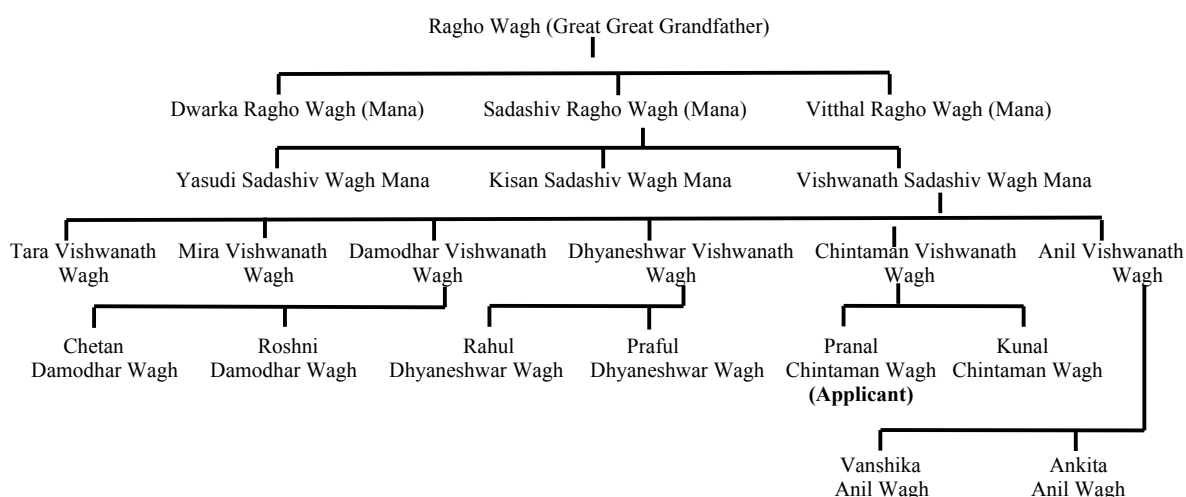
8. The learned counsel for respondent no. 2 employer in reply submitted that the same practice of submission of caste validity certificate is being uniformly followed for all the reserved categories who are selected against the reserved seats. As there was interim relief, the name of the petitioner has not been deleted from the select list for the post of Assistant (panel year 2021).

9. Heard both the parties at length. Perused the record and proceedings produced by the learned AGP for the Scrutiny Committee. The petitioner has placed on record as many as 30 documents. In these documents, there are two entries of Sadashiv Mana, one is extract of birth register, wherein it is shown that, said Sadashiv Mana gave birth to female child and another document is of dated 26/08/1930, which is the extract of death register showing that there is death of one daughter of Sadashiv Mana. Out of those entries, the following are the old entries:-

Name	Relation	Document	Date of document	Caste
Kisan Sadashiv Vishwanath Sadashiv Kunbi	Cousin Grandfather	Ferfar Register	01/04/1946	Kunbi
Sadashiv Vagh gave birth to one son	Great Grandfather	Birth Register	01/12/1920	--
Sadashiv Mana gave birth to female child	Great Grandfather	Birth Register	Unclear/ 03/Unclear	Mana
Sadashiv Mana's female child died (Age 1 day)	Great Grandfather	Death Register	26/08/1930	Mana
Sadashiv Ragho S/o. Vitthal Raghoba Mani Kunbi	Great Grandfather	Ferfar Register	07/01/1937	Mani Kunbi
Vitthal Ragho Mani Kunbi	Cousin Great Grandfather	Ferfar Register	10/07/1937	Mani Kunbi
Vitthal Raghoba Kunbi	Cousin Great Grandfather	Ferfar Register	01/04/1946	Kunbi
Ragho Wagh Mana gave birth to one female child	Great Great Grandfather	Birth Registrar	23/01/1918	Mana
Sadashiv Mana Kunbi gave birth to one son	Great Grandfather	Birth Registrar	01/08/1925	Mana Kunbi

10. The genealogy submitted by the petitioner to the Scrutiny Committee is as under:-

FAMILY TREE



11. From these documents, it can be seen that the oldest entry is of dated 23/01/1918 showing female child born to Ragho Wagh Mana. There are subsequent entries of 'Mana' in respect of Sadashiv Mana of the years 1930 and 1937 whereas said Sadashiv Mana is shown in the year 1937 as 'Mani Kunbi'. Even Vigilance Cell has obtained the document prior to 1950 wherein Sadashiv Mana is shown as Mana Kunbi, Kunbi Mana, Mani Kunbi. In these documents, the oldest document is of the year 1918, which shows the

entry of 'Mana', whereas the document of the year 1938 is in respect of said Sadashiv whose caste is shown as 'Mani Kunbi'. There is no dispute over the genealogy. As such, though Sadashiv is shown as 'Mana' in the document of 1930, he is also shown as 'Mana Kunbi in 1925 and 'Mani Kunbi' in 1937, which clearly can be attributed to an error in the recording of the tribe.

12. The learned counsel for the petitioner relied on the judgment in the case of *Mansi Pundlik Dadmal* (supra), wherein this Court observed in para 9, 10 and 11 as under:-

"9. The relevant portion appearing in sub-paragraph (B) in impugned order of Scrutiny Committee contains a chart and it reproduces certain facts or figures with reference to Government Gazette. The oldest gazette mentioned there is of year 1869-1870. Paragraph or part 136 is reproduced in last column. This portion reads as under:-

136. Koonbees from the Largest, the most important, and the sturdiest portion of the Hindoo land cultivator community so much so that Koonbee has come to the synonymous with agriculturist and it is

no uncommon thing to hear farmer of Brahmin or other caste describe himself as a "Koonbee Manna".

Perusal of this portion, therefore, shows that Koonbee had become synonymous then with agriculturist and even farmers of Brahmin or other castes describe themselves as 'Koonbee Manna'. Other part of said chart then refers to Anthropometric Measurements of Maharashtra by authors like Irawati Karwe and Vishnu Mahadeo Dandekar. Little later in this chart against serial no. 3 while extracting some portion from Gazetteer of India Maharashtra State –Nagpur District (Revised Edition) (First Edition 1908 and Second Edition (Revised 1966) under the heading "People of Hindu Caste mentioned as Mana agriculturist", it is recorded that (I) Manes and Dhanojes are the lowest sub-divisions (ii) Manes appear to be Manas who have become Kunbis. These portions relied upon by Committee, therefore, show that the Committee itself has found that Manas who have become Kunbis were recognized as Manes.

10. Though there is no other material to support these recitals in Government Gazette, the position prevailing prior to 1869-1870 or in 1908, therefore, shows that then people from other castes/tribes were presenting themselves as 'Kunbi Manas'. If Manes are original Manas, we failed to understand as to how finding of document recording caste as 'Mane' can itself be fatal to the caste claim.

11. There is, therefore, no cogent material available

before this Court in the present matter to hold that any caste by name, 'Mana Kunbi', 'Mana Khand', 'Kunbi' independently existed. However, looking to references in old documents, we leave that question open for further consideration in more appropriate matter. In the present case, Committee could not get any material to show that petitioner does not belong to 'Mana', Scheduled Tribe."

13. The learned counsel for the petitioner further placed reliance on **Anand V/s. Commottee for S.V.** (supra) in support of his contention that, the affinity test cannot be applied if the old documents are on record. It is his contention that the petitioner's claim cannot be negated on the ground that he did not possess the basic characteristic, knowledge of customs and culture of the said tribe. In the said case, the Hon'ble Apex Court laid down some broad parameters, which could be kept in view while dealing with a caste claim, which read as under:-

(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.

14. As such, it is held that the affinity test may not be regarded as litmus test for establishing link of the applicant with the Scheduled Tribe. Insofar as the reliance on some of the entries pertaining to the petitioner's relatives from the paternal side showing the caste 'Mana Kunbi' is concerned,

perusal of the said document would reveal that, the caste of the said person is written as 'Mana Kunbi'. As observed by this Court in *Manisha Pundlik Dadmal* (supra) that, Koonbee has become synonymous then with agriculturist. The reference is given from the Gazetteer of India Maharashtra State - Nagpur District (Revised Edition) (First Edition 1908 and Second Edition (Revision 1966) under the heading "People of Hindu Caste mentioned as Mana agriculturist", it is recorded that (i) Manes and Dhanojes are the lowest sub-divisions and (ii) Manes appear to be Manas who have become Kunbis. This Court held that, the position prevailing prior to 1869-1870 or in 1908, therefore, shows that then people from other castes/tribes were presenting themselves as 'Kunbi Manas'.

15. Mere some stray entries as Kunbi or Mana Kunbi recorded in respect of caste of some of the relatives of the petitioner from their paternal side, the documentary evidence of pre-Constitutional era specifically oldest documents, which

clearly certifies that, the petitioner's great great grandfather to be 'Mana' could not have been lightly brushed aside by the Scrutiny Committee. So far as the statement made in the sale deeds by the relatives of the petitioner that, they are not belonging to S.T., cannot be considered in the present case as there is oldest entry showing the petitioner as 'Mana' and moreover, such statements may have been given to avoid sanction from the Collector for such sale. The petitioner has submitted the documents in his possession including one document showing entry as 'Kunbi' of 1946 in respect of Kisan Sadashiv and Vishwanath Sadashiv. However, the oldest entry of 23/01/1918 in respect of Ragho Wagh (great great grandfather) is shown as 'Mana'. Thus, if Ragho Wagh (genealogy not disputed) was shown as 'Mana', his heirs cannot belong to 'Kunbi'. The learned Scrutiny Committee discarded this document of 23/01/1918 that though Ragho Wagh is shown as 'Mana' and it was entered into register that he gave birth to one daughter, there are no other documents

placed on record by the petitioner in respect of daughter. This reason for discarding the oldest entry of dated 23/01/1918 is absurd. In the first place, the document which is produced by the petitioner is more than 100 years old document and duly verified by the Vegilance Cell. Expecting the petitioner to place on record the document of child born is erroneous. Similarly, in the case in respect of the document which is in respect of Sadashiv Mana dated 26/08/1930 which is the death extract of daughter of Sadashiv Mana. In some of the documents, the person who is shown as Mana described as Mane Kunbi, however, it is a settled position of law that oldest entry will prevail over the subsequent entries. Thus, entry dated 23/01/1918 showing great great grandfather as 'Mana' will prevail over other entries. When main ancestor is shown to belong to 'Mana', subsequent entries in respect of other ancestors as 'Mana Kunbi and Mani are of no significance. Even there are entries of 'Mana' in respect of Sadashiv, he is also shown as 'Mana Kunbi'. If forefather of

Sadashiv is shown as 'Mana', the entry in respect of Sadashiv as 'Mana' needs to be considered. However, it is not the case of respondent no. 1 the Scrutiny Committee that these documents are either fraudulent or fabricated one. The genuineness of these documents have not been doubted in the report of Vigilance Cell. As such, in our considered opinion, we find that the Scrutiny Committee has grossly erred in rejecting the tribe claim of the petitioner which claim is supported by the document dated 23/01/1918. As such, the petition deserves to be allowed. Accordingly, we proceed to pass the following order:-

ORDER

- i) The Writ Petition is allowed.
- ii) The order dated 19/06/2023 passed by the respondent no. 1 - the Scheduled Tribe Certificate Scrutiny Committee, Yavatmal in the matter of the petitioner - Mr. Pranal s/o Chintaman Wagh, in Case

No. 11/510/Preser/022023/4735, is hereby quashed and set aside.

iii) It is held that the petitioner has duly established that he belongs to 'Mana' Scheduled Tribe as included in Entry No. 18 of the Constitutional (Scheduled Tribes) Order, 1950.

iv) The respondent no. 1 - the Scheduled Tribe Caste Certificate Scrutiny Committee, Yavatmal is hereby directed to issue validity certificate to the petitioner of Scheduled Tribe 'Mana' within a period of four weeks.

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

(Judge)

(Judge)

B.T.Khapekar