

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

Writ Petition No.7005/2022

Shubham s/o Mahadeo Gudade,
Aged about 19 years, Occ.-Student,
R/o.-Indraprastha Nagar, Natuwadi, Darwha,
Tah. Darwha, District Yavatmal.

.... Petitioner.

Versus

1. Vice President & Member-Secretary,
The Scheduled Tribe Caste Certificate Scrutiny Committee,
Yavatmal, Sai Uttam Villa, House no.3, Near Rangoli Ground,
Shastri Nagar, Yavatmal-445001.
2. State Common Entrance Test Cell,
Maharashtra State, 8th Floor, New Excelsior Building,
AK Nayak Marg, Azad Maidan, fort, Mumbai-400001 (M.S.)
3. The Principal, Prof. Ram Meghe Institute of Technology and
Research, Anjangaon, Bari Road, Badnera District Amravati.
4. Vice Chancellor, Sant Gadge Baba Amravati University, Amravati,
Mardi Road, CRPF Colony, Amravati 444602.
5. Project Officer, Tribal Development Department,
Dharni, Tah. Dharni, District Amravati.

.... Respondents.

Mr. Ananta Ramteke, Advocate for the petitioner.
Mr. R.D. Bhuihar, Advocate for respondent no.3.
Mrs N.P. Mehta, Addl.GP for the respondent nos.1 and 5.

CORAM : Nitin W. Sambre & Abhay J. Mantri, JJ

DATE : 02-01-2024.

J u d g m e n t (Per Abhay J Mantri, J.)

Rule. Rule is made returnable forthwith and heard finally with the consent of learned Counsel for the parties.

2. The petitioner being dissatisfied with the order dated 07-11-2022 passed in Case ID No. 5/510/Edu/ 122021/ 194771 by the respondent no.-1 Vice President & Member-Secretary, the Scheduled Tribe Caste Certificate Scrutiny Committee, Yavatmal (for short-'*the Scrutiny Committee*'), thereby invalidating the claim of the petitioner that he belongs to '*Mana*' Scheduled Tribe category, has preferred this petition.

3. It is a case of the petitioner that he belongs to the '*Mana*' Scheduled Tribe which is listed at Entry No.18 in the Constitution (Scheduled Tribes) Order, 1950. On 07-10-2020, the Sub-Divisional Officer, Kelapur, District Yavatmal, issued a certificate in favour of the petitioner that he belongs to the '*Mana*' Scheduled Tribe.

4. Since the petitioner was desirous to make his educational career in professional education i.e. Engineering Course. On 08-03-2022, he submitted his tribe claim to respondent no. 1- The Scrutiny Committee along with documents for verification. In support of his claim, the petitioner has relied upon documents that are as old as of the years 1917 and 1937 and other documents. He claimed that since the documents pertaining to the pre-constitutional era have more probationer value, his Scheduled Tribe claim is entitled to be validated.

5. The Scrutiny Committee pursuant to the provisions of sub-rule (2) of Rule 12 of the Scheduled Tribe (Regulation of

Issuance of Verification of Certificate) Rules, 2003 referred the petitioner's case to the Vigilance Cell for a detailed enquiry into the Tribe's claim of the petitioner.

6. The Vigilance Cell thereafter collected the documents in relation to the School and Tahsil Record of Petitioner's great-grandfather and great-great-grandfather and submitted its report with the Committee observing that the petitioner failed to produce the documents on record to substantiate the fact that Aadku @ Aako is one and the same person.

7. In the aforesaid backdrop, the petitioner was served with a show cause notice by respondent no.1-Scrutiny Committee calling upon him to explain the aforesaid discrepancy. The petitioner appeared through his father before the Scrutiny Committee for a hearing.

8. The Scrutiny Committee after considering the submissions made by the petitioner evaluated the material placed on record and vide impugned order invalidated the claim of the petitioner that he belongs to the '*Mana*' Scheduled Tribe. Being aggrieved by the same, the petitioner has preferred this petition.

9. The learned Counsel for the petitioner in support of the prayer for quashing the impugned order and in furtherance thereto, for issuance of the validity certificate has invited our attention to the oldest entries of the Kotwal book and birth

register of the years 1917 and 1937 in relation to the great-great-grandfather and great-grandfather respectively of the petitioner, which find place in the Birth Register of the Tahsil Office and other documents. He further argued that the aforesaid documents are not disputed by the Scrutiny Committee and Vigilance Cell, but they only observed that except for the aforesaid documents no other material was produced on record to substantiate that Aadku @ Ako is one and the same person. Therefore, he submitted that respondent no.-1-Scrutiny Committee has erred in relying on the entries that appeared on the first page of the service book of the father of the petitioner regarding Other Backward Class caste and another entry about 'Mana Kunbi' by discarding the other documents on record. According to him, there is no caste by the name 'Mana Kunbi'. In support of his submissions, the learned Counsel has drawn support from the judgments of this Court in (Anil Ramdas Medhe vs State of Maharashtra and others reported in 2004(4) ALL MR 639), Anand vs Committee for Scrutiny and Verification of Tribe Claims and others, reported in 2011(6) Mh.L.J. 919, Mana Adim Jamat Mandal vs State of Maharashtra and others, reported in 2003(3) Mh.L.J. 513, Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti vs State of Maharashtra and others, reported in AIR 2023 SC 1657 and the judgment of the Hon'ble Apex Court in Priya Pramod Gajbe vs State of Maharashtra and others reported in 2023 SCC OnLine SC 909, and submitted that passing of the impugned order by the

respondent no.1 -Scrutiny Committee, ignoring the old documents of the years 1917 and 1937, is illegal and bad-in-law.

10. *Per contra*, learned Additional Government Pleader resisted the petition on the ground that the Vigilance Cell report denotes that the school record and service book of the father of the petitioner shows that his father belongs to '*Mana Kunbi*' and 'Other Backward Class' category and therefore it cannot be said that the petitioner belongs to Scheduled Tribe caste. It is contended that the petitioner failed to produce material on record to substantiate that Aadku @ Aako are one and the same person. So also, the Vigilance Cell report clearly shows that the petitioner could not establish his socio-cultural affinity with the '*Mana*' Scheduled Tribe. In support of her submission, she has relied upon various judgments as mentioned in paragraph 15 of the affidavit in reply. Thus, she urged that the Scrutiny Committee has considered the documents placed on record and as such based on the same, rightly invalidated the claim of the petitioner. Hence, she has prayed for the dismissal of the petition.

11. We have considered the rival submissions of the parties and gone through the record and the impugned order. It is pertinent to note that the petitioner in support of his claim has relied upon the extracts of the Birth Register dated 16-09-1917 and 17-07-1937. The first entry indicates that a male child was born to Ako @ Aadku (Mana) and the second document dated

17-07-1937 denotes that one male child namely Ukandya was born to Shrawan S/o Aadku (Mana). In both documents caste of Shrawn and Aadku is mentioned as '*Mana*'. Aadku @ Ako is the great-great-grandfather of the petitioner and Shrawan s/o Aadku is the great-grandfather of the petitioner. It is pertinent to note that neither the Vigilance Cell report nor the Scrutiny Committee have disputed the relationship of the petitioner with Shrawan and Aadku @ Aako, but the Scrutiny Committee and Vigilance Cell only observed that the petitioner failed to produce material before them to show that Aadku @ Aako is the one and the same person. Except that nothing adverse has been brought on record. The birth extract register was maintained by the Tahsil Office and therefore there is no reason to discard the said documents in the absence of showing that the entries made therein are false.

12. The Vigilance Cell as well as the Scrutiny Committee has given undue importance to the extract of the first page of the service book of the father of the petitioner, wherein his caste is shown as Other backward Class. However, no finding has been given by the Scrutiny Committee, on which basis the said entry of 'Other Backward Class' was recorded in the service book of the father of the petitioner, so also they failed to give a finding about the genuineness of the said entry when the pre-constitutional era documents are available on record indicating the caste of great-grandfather and great-great-grandfather of the petitioner as they belong to '*Mana*' Scheduled Tribe.

13. The Scrutiny Committee has relied upon the second document dated 10-07-1964 in respect of the school record of the father of the petitioner, wherein his caste is mentioned as '*Mana Kunbi*'. The Scrutiny Committee has considered these two documents and ignored the old documents and has passed the impugned order. The '*Mana Kunbi*' is not a caste recognized by any of the public documents which can be said to be other than the Scheduled Tribes. In such an eventuality, the observations of the Scrutiny Committee that the documents pertaining to the '*Mana Kumbi*' caste cannot be relied on to invalidate the tribe claim of the petitioner. Rather the entries in the documents that are relied upon by the petitioner duly depict that the same pertains to the pre-constitutional era and it has more evidentiary and probative value than the other documents of the years 1967 and 1990. These two documents are produced on record by the petitioner pointing out that his ancestors belonged to the '*Mana*' Scheduled Tribe and as such said fact fortifies his claim of belonging to '*Mana*' Scheduled Tribe. As such, the oldest documents of the years 1917 and 1937 can be safely relied on for the grant of the '*Mana*' Tribe Validity Certificate in favour of the petitioner.

14. Moreover, the Vigilance Cell report did not dispute the genuineness of these two documents. However, they have affirmed the said entries, but only observed that no document or material is placed on record to substantiate the name viz; Aadku @

Aako is one and the same person, except their oral statement. For the sake of argument, even though there is some ambiguity in the name Aadku or Aako that is not detrimental to the entries in the documents of the years 1917 and 1937 wherein the name of the great-grandfather of the petitioner is mentioned and his caste is mentioned as '*Mana*' Scheduled Tribe, the said documents are not controverted by the Vigilance Cell Department or Scrutiny Committee. Therefore, there is no reason to discard the said documents by the Committee but those are sufficient to grant Tribe Validity Certificate in favour of the petitioner. Thus, it seems that the observations recorded in the order by the Scrutiny Committee have not been supported by cogent and reliable documents and therefore we do not find substance in the findings recorded by the Scrutiny Committee ignoring the vital documents of the years 1917 and 1937.

15. Apart from the above, though a finding is recorded by the Scrutiny Committee that the petitioner has failed to satisfy the affinity test, the fact remains that the satisfaction of the affinity test can be considered for the purposes of confirmation of claim for grant of validity. The Hon'ble Apex Court had an occasion to consider the reliance to be placed by the Scrutiny Committee in the matter of granting of Validity Certificate based on the affinity test. In the case of **Priya Gajbe** (Supra) the Hon'ble Apex Court held that "*the affinity test cannot be applied as a litmus test*". The Hon'ble Apex Court further held that "*the affinity test may be*

used to corroborate the documentary evidence, it should not be the sole criteria to reject the claim."

16. Moreover, the respondent no.1-Scrutiny Committee in its reply has not disputed the entries dated 16-09-1917 or dated 17-07-1937.

17. In the case of Anand (supra), the Hon'ble Apex Court has observed that "*while dealing with the documentary evidence, 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.*"

18. In the case of **Mana Adim Jamat** (supra), this Court has observed that "*Since under Entry 18 Manas are specifically included in the list of Scheduled Tribes in relation to the State of Maharashtra, Manas throughout the State must be deemed to be Scheduled Tribe by reason of provisions of the Scheduled Tribes Order. Once Manas throughout the State is entitled to be treated as a Scheduled Tribe by reasons of the Scheduled Tribes Order as it now stands, it is not open to the State Government to say otherwise as it has purported to do in various Government Resolutions*". Likewise in the case of **Priya Gajbe** (supra), the Hon'ble Apex Court observed that "*with regard to the area restriction is concerned, it could be seen that Mana tribe is found at Entry 18 in the Presidential Order with respect of Scheduled Caste and Scheduled Tribe or the State of Maharashtra. It could be seen that in the said entries, there is no area restriction with regard to any of the tribes mentioned therein.*"

19. In view of the above dictum laid down by this Court and the Hon'ble Apex Court, it clearly appears that there is no area restriction about the tribes mentioned in Entry 18.

20. To sum up, the above discussion, it reveals, that respondent no.1-Scrutiny Committee has ignored to consider the pre-constitutional documents of the years 1917 and 1937, contrary to the dictum laid down by the Hon'ble Apex Court in the case of Anand (supra), and relied upon the post-constitutional documents. From the documents of the years 1917 and 1937 produced by the petitioner, it categorically appears that his great-grandfather and great-great-grandfather belong to the 'Mana' Scheduled Tribe. The Vigilance Cell report does not indicate that the documents produced by the petitioner in support of his claim are false or not genuine. In fact, the said documents have a greater probative value than the post-constitutional documents on which the Scrutiny Committee has relied. That being so, it seems that the Scrutiny Committee erred in ignoring the pre-constitutional documents on record. Thus, it seems that the findings given by the Scrutiny Committee are contrary to the dictum laid down in the cases referred to supra as well as the facts on record. Therefore, based on the said findings, the order cannot be sustained in the eyes of and the same is liable to be quashed and set aside.

21. In the aforesaid background, we deem it appropriate to allow the petition in the following terms :-

- (a) The impugned order dated 07-11-2022 passed in Case ID 5/510/Edu/122021/194771 by respondent no.1 Scrutiny Committee is hereby quashed and set aside.
- (b) It is declared that the petitioner has proved that he belongs to the '*Mana*' Scheduled Tribe.
- (c) Within a period of four weeks from the receipt of a copy of this judgment respondent no.1 - Scrutiny Committee shall issue Caste Validity Certificate in favour of the petitioner.

22. Rule is made absolute in the above terms with no order as to costs.

(Abhay J. Mantri, J.)

(Nitin W. Sambre, J)

Deshmukh