



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

WRIT PETITION NO. 232 OF 2023

Tushar S/o Devidas Mangale,
Aged about 23 yrs, Occ. Student,
R/o At-Post - Anji (Nursinha),
Tah. Ghatanji, Distt. Yavatmal.

PETITIONER

Versus

1. The Vice-Chairman / Member-Secretary,
Scheduled Tribe Caste Certificate
Scrutiny Committee, Yavatmal.
2. The Principal,
Jawaharlal Darda Institute of
Engineering & Technology, Yavatmal.
3. The Vice-Chancellor/Registrar,
Sant Gadge Baba Amravati University,
Amravati.
4. The Project Officer,
Integrated Tribal Development Project,
Pandharkawda, Dist-Yavatmal.

RESPONDENTS

Ms. Preeti D. Rane, Advocate for the Petitioner.
Mr. H.R. Dhumale, AGP for the Respondent Nos. 1 & 4 /State.
Ms. Shaad Mirza, Advocate for the Respondent No.2.
Ms. Sakina Dawood, Advocate h/f Mrs. Gauri Venkatraman,
Advocate for the Respondent No.3.

**CORAM : AVINASH G. GHAROTE AND
ABHAY J. MANTRI, JJ.**

CLOSED FOR JUDGMENT ON :- 11th DECEMBER 2024

JUDGMENT PRONOUNCED ON :- 16th JANUARY 2025

ORAL JUDGMENT :- (PER : ABHAY J. MANTRI, J.)

Heard.

2. **Rule.** Heard finally, with the consent of the learned Counsels for the respective parties.

3. The challenge is raised to the order dated 15.12.2022 passed by Respondent No.1/Scheduled Tribes Caste Certificate Scrutiny Committee (for short-“*the Committee*”), thereby invalidating the claim of the Petitioner that he belongs to ‘*Mana*’ Scheduled Tribe.

4. The Petitioner claims that he belongs to the ‘*Mana*’ Scheduled Tribe. On 15.06.2017, the Sub-Divisional Officer, Kelapur, issued a caste certificate in his favour. The Petitioner,

through his college, submitted a caste certificate along with documents before the Committee for its verification. Since the Committee was of the view that the Petitioner's claim was doubtful, the documents submitted by him were forwarded to the Vigilance Cell for a detailed enquiry. The Vigilance Cell thoroughly enquired about this and submitted its report to the Committee. During the enquiry, some adverse entries were found against the Petitioner's caste claim. The Committee vide show cause notice dated 28.11.2022 called upon him to submit his explanation to the said adverse entries found in the Vigilance enquiry. In response, the Petitioner, with his father, appeared before the Committee and submitted his explanation. After considering the Vigilance Cell report, documents on record, and explanation submitted by the Petitioner, the Respondent No.1/Committee vide impugned order rejected the Petitioner's Tribe claim. Hence, this Petition.

5. Ms. Rane, learned Counsel for the Petitioner while assailing the impugned order, submitted that the Petitioner has produced 27 documents to substantiate his claim; out of them, 4 documents are of Pre-Constitutional Era from 1928 to 1944,

wherein his ancestor's caste was recorded as '*Mana*'. The entry dated 14.04.1928 pertains to his great-grandfather, whose caste was recorded as '*Mana*'. However, the Committee has not considered those oldest entries but erred in considering the subsequent entries and rejected the claim of the Petitioner. Therefore, rejecting the Petitioner's claim by the Committee is illegal and liable to be set aside. Hence, she submitted for allowing the Petition.

6. In order to substantiate her contentions, Ms. Rane, learned Counsel for the Petitioner, has relied upon various judgments of this Court (i) *Gajanan s/o Pandurang Shende Vs. Head-Master, Govt. Ashram School Dongargaon, Salod and others*, reported in *2018(2) Mh.L.J. 460*, (ii) *Gitesh s/o Narendra Ghormare Vs. Scheduled Tribe Certificate Scrutiny Committee, Nagpur and others*, reported in *2018(4) Mh.L.J. 933* and (iii) *Umesh s/o Ganeshrao Jambhore Vs. Vice-Chairman / Member-Secretary, Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati and others*, reported in *2022(3) Mh.L.J. 31*. It is pertinent to note that all three judgments have been held not to be laying good law by the *Full Bench* of this Court in *Maroti S/o Vyankati Gaikwad and*

others V/s Deputy Director and Member Secretary, Amravati and others reported in 2023 SCC online Bombay 1991.

7. *Per contra*, Mr. Dhumale, learned AGP for the Respondent Nos. 1 and 4/State, vehemently contended that during the Vigilance Cell enquiry, the Vigilance Cell discovered the adverse entries to the claim of the Petitioner from 1946 to 1963, wherein his ancestors' caste was recorded as '*Kunbi*' and '*Mani*'. The Petitioner has not explained those adverse entries, and therefore, the passing of the impugned order by the Committee is just and proper, and no interference is required in it. He further canvassed that the Petitioner had not mentioned the name of the father of Kanhu, so Sayatri's name was also not shown in the genealogical tree. Therefore, the documents of 1928 and 1941 cannot be relied upon by the Committee while considering the claim of the Petitioner. Thus, the Petitioner is not entitled to benefit from those documents; the Committee has rightly discarded those documents. Hence, he submitted that the Petitioner failed to prove his caste as '*Mana*'. Therefore, he prayed for rejection of the Petition.

8. We have appreciated the rival submissions and perused the record and judgments relied upon by the learned Counsel for the Petitioner. We have perused the original record and returned it.

9. At the outset, it is evident that the Petitioner, to substantiate his claim, has produced as many as 27 documents, out of which '4' are from the Pre-Constitutional Era from 1928 to 1944. The document dated 14.04.1928 is a copy of the birth and death register extract; the entry pertains to '*Kanhu S/o Kondu Mana*', Resident of Village *Anji*, Tahsil Ghatanji. The Committee, as well as the Vigilance Cell, has not disputed that the ancestors of the Petitioner were the residents of Village Anji, Tahsil Ghatanji. The Committee has discarded the said documents only on the ground that Kanhu's father's name has not been mentioned in the genealogical tree. The reason recorded by the Committee is neither proper nor just to discard the said documents. On the contrary, it was incumbent on the Committee to ascertain whether the said entries were about the ancestors of the Petitioner or not. Mere discarding the said documents on the ground that the father's name of Kanhu is not

mentioned in the genealogical tree is not just and proper. Therefore, we do not find any substance in the said finding.

10. Similarly, the Committee has discarded the entries in the extract of birth and death registers of Village Anji, Tahsil Ghatanji, of June 1941 and 17.10.1944 pertaining to Sayatri. According to the Petitioner, Sayatri was born in June 1941 and died on 17.10.1944; therefore, her name was inadvertently not mentioned in the genealogical tree. Sayatri, a girl, was born to Kondya Kanhu, the cousin grandfather of the Petitioner. The Committee and the Vigilance Cell have not disputed the said entries but only discarded the documents, as Sayatri's name was not mentioned in the genealogical tree. Had it been the fact that the committee and the vigilance cell disputed her relationship with the petitioner's ancestors, then discarding the same could be considered, but in the absence of the same, recording the finding to discard the documents is not proper. Hence, we do not find any substance in the finding recorded by the Committee in that regard. Thus, it appears that the Committee has discarded the entries dated 14.04.1928, June 1941, July 1941 and 17.10.1944, particularly on the ground that names of

the ancestors are not mentioned in the genealogical tree. In fact, the explanation given by the Petitioner in that regard has to be considered; it would have been seen as just and proper. Therefore, not mentioning the name of Sayatri or the father of Kanhu in the genealogical tree, who belongs to Anji village, would not affect the Petitioner's claim that they were his ancestors. Neither the Committee nor the Vigilance Cell has disputed the said entries. Therefore, the finding recorded by the Committee in that regard appears to be improper, contrary to the fact on record, and based on the said finding, the order cannot be sustained in the eyes of the law.

11. *Furthermore*, it appears that the Petitioner has also produced the extract of the birth and death register of his grandfather Laxman Mana, wherein it is mentioned that a son, namely Narayan, was born to him on 06.08.1941. However, the Committee discarded the said document on the ground that the Petitioner has not produced any other document pertaining to Narayan to corroborate the said entry. On the contrary, it was incumbent on the Committee to ascertain the said entry through the Vigilance Cell, but it failed to ascertain the said entry and

discarded the said document merely on the ground that the Petitioner has not produced other document in support of the same to corroborate the said entry. Thus, the finding given by the Committee in that regard appears to be incorrect.

12. On perusal of the original record, it seems that the Petitioner, in support of his claim, has produced a copy of the birth and death extract of Anji Village before the Committee for the years 1928, 1941 and 1944 related to his ancestors. The Petitioner claims that Kanhu is the son of Kondu, the great-grandfather and resident of Anji Village. Similarly, Kondba Kanhu was his cousin-grandfather and a girl, Sayatri, was born to him in 1941 and died in 1944. The entries are also from the same village. Neither the Committee nor the Vigilance Cell disputed or denied the said entries. However, their names did not appear in the family tree; only on that ground alone discarded the documents. In fact, it was obligatory on the Vigilance Cell to verify those entries whether those entries pertain to the ancestors of the Petitioner or not, but without verifying the said entries, the same were discarded, and thus, the finding recorded by the committee needs to be interfered

being improper.

13. It further reveals that the Committee has relied on the adverse entries of the years 1946, 1949, 1951 and 1958, wherein the caste of the ancestors of the Petitioner was recorded as “*Kunbi, Mane and Mani*”. Notably, those entries are subsequent to those of 1928, 1941, and 1944. It is the settled position of law that the oldest entry has a more probative value than subsequent entry, and therefore, as per the settled position of law, the Committee should have considered the oldest entry while considering the claim of the Petitioner instead of discarding the same. Thus, in our view, the Committee erred in discarding the oldest entries, which have more probative value than the subsequent entries, and therefore, the impugned order cannot be sustained in the eyes of the law.

14. In *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. The State of Maharashtra and others*, reported in AIR 2023 SC 1657 that the Hon’ble Apex Court has categorically held that” *the overall material on record has to be considered and the report of the Vigilance Cell cannot be treated to be the sole*

basis for discarding such claim. Likewise, the affinity test cannot be treated as a litmus test, particularly when the pre-constitutional document exists and is placed on record. It is further held that the document of the Pre-Constitutional Era has the highest probative value than the subsequent document.”

(emphasis supplied.)

15. In the background above, it seems that the Committee, without considering the oldest pre-constitutional document placed on record, has discarded the petitioner's claim solely on the ground that the Petitioner failed to prove his ancestors' adverse entries from 1946 to 1963. In fact, the Committee has to consider the oldest documents produced on record while considering the petitioner's claim.

16. Thus, to sum up, it reveals that the Petitioner, in support of his claim, has relied upon the document of his great-grandfather, cousin-grandfather and Grandfather, wherein their caste has been recorded as '**Mana**' and the said documents are the oldest documents from 1928 to 1944. Therefore, those documents have a greater probative value than the subsequent documents. Thus, in our view, as per the mandate laid down in

the case of *Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti* (supra) and the mandate laid down in the decision of *Maroti S/o Vyankati Gaikwad* and *others* (supra) and the facts on record, it is evident that the Petitioner has proved that he belongs to '*Mana*' Scheduled Tribe, and therefore, the finding recorded by the Committee appears contrary to the mandate laid down above as well documents on record, based on which the impugned order cannot be sustained in the eyes of law. Consequently, the same is liable to be quashed and set aside.

17. The impugned order dated 15.12.2022 passed by Respondent No.1/Committee is hereby quashed and set aside. It is declared that the Petitioner belongs to the '*Mana*' Scheduled Tribe.

18. The Respondent No.1/Committee shall issue a Caste Validity Certificate in favour of the Petitioner within four weeks from the date of production of the copy of this judgment.

19. The Petition is accordingly **allowed** in the above terms.

20. Rule is made absolute in the above terms. No costs.
21. Pending applications, if any, shall stand disposed of accordingly.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)

S.D.Bhimte