



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.217 OF 2023

Vanshaj s/o Arun Sawsakade aged
about 17 yrs, Occ. Student, Through
Natural Guardian father Shr Arun s/o
Panjabrao Sawsakade aged about 49 yrs,
Occ. Nil, R/o At post – Kotha (Veni),
Tah. Kalamb, Distt. Yavatmal - 445101

... PETITIONER

VERSUS

The Vice-Chairman/Member –
Secretary, Scheduled Tribe Caste
Certificate Scrutiny Committee,
Yavatmal.

... RESPONDENT

Ms Preeti Rane, Advocate for the petitioner.
Shri I.J. Damle, Assistant Government Pleader for the State.

CORAM : VINAY JOSHI AND SMT. M.S. JAWALKAR, JJ.
DATE : 10.07.2024.

JUDGMENT : (Per : Vinay Joshi, J.)

Heard. **RULE.** Rule is made returnable forthwith.

2. The matter is taken up for final disposal by consent of the parties.

Corrected as
per Court's
order dated
16.07.2024

3. The caste claim of the petitioner student has been forwarded to the Scrutiny Committee for verification and issuance of validity certificate. The petitioner's caste claims for "Mana" Scheduled Tribe, which is enlisted at serial No.18 in the Constitution (Scheduled Tribes) Order, 1950 has been invalidated by the respondent- Scrutiny Committee vide order dated 21.11.2022. Rejection of petitioner's caste claim is the subject matter of this petition.

4. The petitioner was pursuing his education in 12th standard. For further education his caste claim was forwarded to the Scrutiny Committee for verification along with necessary documents. The petitioner has submitted voluminous documents along with two prior validities issued in the family. It is the petitioner's contention that, despite producing various pre-constitutional documents, the Committee erred in discarding the same for the reason of isolated adverse entry of one Keshav, who does not belong to his family. It is stated that, the petitioner has submitted two prior validities of his real uncle of Special Backward Class (SBC) caste, which was later on converted into the Scheduled Tribe, but the same has been discarded. The petitioner would submit that only on the ground of failure in affinity test, the genuine claim has been rejected.

5. As against this, the respondent vide reply-affidavit dated 20.03.2023 supported the verdict of the Scrutiny Committee. It is contended that during vigilance enquiry, adverse document showing Kunbi caste was procured by the Committee. The said document being oldest needs to be given primacy. It is contended that the petitioner's two uncle have obtained validity certificate of Mana belonging to SBC category and therefore, it would not support the petitioner's claim. Moreover, it is contended that the petitioner's father while executing the sale-deed has recited that he does not belong to tribal community, which goes against the petitioner's tribal claim. Lastly, it is contended that the petitioner also failed in affinity test, which justifies the decision of the Scrutiny Committee.

6. The petitioner claims to be belonging to Mana caste, which is recognized as Scheduled Tribe. The petitioner has produced in all 21 documents in support of caste claim, including the documents of pre-constitutional era. Particularly, the petitioner laid emphasis on the birth register extract dated 17.08.1941 showing that petitioner's great grandfather Chanba Mahadev had a son namely Krushna. Besides that petitioner has tendered birth register extract dated 08.05.1953 of his grandfather Chandrabhan. So also some more documents have been produced showing the entry of Mana caste.

7. Vigilance enquiry was carried in which one adverse document of Keshav Mahadev dated 15.06.1941 has been procured. The said documents bears a caste entry as a Kunbi. The Committee has issued a show cause notice seeking explanation on said adverse entry. The petitioner has replied to the show cause notice by stating that Keshav does not belongs to his family. The genealogical tree furnished by the petitioner as well as prepared by the Vigilance Cell does not disclose that Mahadev had a son namely Keshav. On the background of denial of relationship with Keshav, the vigilance ought to have procured more material to show that Keshav relates to the family. Therefore, in absence of relationship with Keshav, it is difficult to rely on said adverse entry.

8. The petitioner has also produced caste validity certificate of his real uncle Ajay and Anil. The petitioner's relationship with Ajay and Anil has not been disputed. Those caste validity certificates shows that both belongs to Mana caste, which is recognized as SBC. The learned Counsel for the petitioner would submit that initially, Mana was included in SBC however by virtue of decision rendered by the Apex Court, the Government has issued Resolution dated 02.06.2004 excluding the entry of "Mana" falling in SBC or OBC category. More importantly, entry of Mana are declared to be of Scheduled Tribe

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category. In the wake of such position, the prior validities, particularly demonstrating that the petitioner's blood relatives belongs to Mana caste assumes significance. Notably, the Scrutiny Committee has not doubted about the genuineness of the pre-constitutional documents i.e. the birth register extract dated 15.08.1941 relating to petitioner's great grandfather.

9. Though it is argued that the petitioner's father while executing the sale-deed stated that he does not belong to Scheduled Tribe. The said material cannot be treated as a decisive factor since the possibility of making said statement for some other reason cannot be denied.

10. In respect of affinity test, the Apex Court in case of **Anand vs. Committee for Scrutiny and Verification of Tribe Claims, 2011(6) Mh.L.J. (S.C.) 919** has laid down that a cautious approach has to be adopted and with the migration, modernization 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. It holds that the affinity test may not be recorded as litmus test for establishing the link of the applicant with the Scheduled Tribe. The affinity test is to be used to corroborate the documentary evidence

and it is not to be used as the sole criteria to reject a claim.

11. During vigilance enquiry, the Scrutiny Committee has not doubted about genuineness of oldest document dated 15.08.1941 nor found any adverse remark. Moreover, in case of *Anand vs. Committee for Scrutiny and Verification of Tribe Claims (supra)*, it is observed that 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. Since there is no material to hold that Keshav belongs to the petitioner's family, primacy has to be given to the oldest document of the petitioner's great grandfather Chanba Mahadev. Moreover, the petitioner has produced several documents showing the caste entry as "Mana". Likewise, two validity certificate were issued in the family showing specific entry of "Mana" caste.

12. In that view of the matter, we are of the considered view that the Scrutiny Committee fell in error in rejecting petitioner's caste claim. The petitioner has established that he belongs to "Mana" Scheduled Tribe, hence, we pass the following order :

(a) The Writ Petition is allowed.

- (b) The impugned order passed by the respondent – Scrutiny Committee dated 21.11.2022 invalidating the caste claim of the petitioner as belongs to “Mana” Scheduled Tribe, is quash and set aside.
- (c) It is declared that the petitioner belongs to “Mana” Scheduled Tribe, which has entry No.18 in the list of Constitution (Scheduled Tribes) Order, 1950. The Respondent Scrutiny Committee shall issue validity certificate to the petitioner within a period of four weeks from the date of receipt of copy of this order.
13. Rule is made absolute in above terms. No costs.

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

(VINAY JOSHI, J.)

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