



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

WRIT PETITION NO. 12 OF 2022

- (1) Maroti S/o Vyankati Gaikwad,
Aged about 62 years, Occ. Retired
- (2) Ganesh S/o Maroti Gaikwad,
Aged about 38 years, Occ. Service,
- (3) Archana D/o Maroti Gaikwad,
Aged about 33 years, Occ. Service,
- All R/o. Dongarkherda, Tah. Kalamb,
District Yavatmal.

.....**PETITIONERS**

...V E R S U S...

- (1) Deputy Director & Member-
Secretary, The Scheduled Tribe
Caste Certificate Scrutiny
Committee, Amravati, opposite of
office of State Information
Commission, Chaprashipura,
Amravati.
- (2) President/Secretary, Singhgad
Technical Education Society,
Erandwane, Smt. Khilare Marg,
Opp. Karve Road, Pune-411004
- (3) Principal, Singhgad Institute of
Technology, Kusgaon (Bk.), Tah.
Lonawada, District Pune
- (4) Registrar, Savitribai Fule
University, Pune, Ganeshkhind
Road, Ganeshkhind, Pune-411007

(5) Zilla Parishad, Yavatmal, through
its Chief Executive Officer, Arni
Road, Yavatmal-445001

(6) Education Officer (Primary),
Zilla Parishad, Yavatmal,
Arni Road, Yavatmal.

.....**RESPONDENTS**

Mr. Ananta Ramteke with Mr. Khare, Advocates for petitioners
Mr. S. M. Ukey, Addl. G. P. with Mr. M. K. Pathan, A.G.P. for
respondent 1

Mr. A. R. Patne, Advocate for respondents 2 and 3

CORAM : ROHIT B. DEO AND
MRS. VRUSHALI V. JOSHI, JJ.

DATE : 17-04-2023

ORDER (PER : Rohit B. Deo, J.)

Petitioners are assailing the order dated 15-9-2021 rendered by the Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati (Scrutiny Committee) whereby the petitioners are held not belonging to “Mana”, Scheduled Tribe.

2. The Scrutiny Committee considered ten documents which were verified by the vigilance cell. While certain pre-constitution documents pertaining to the paternal relatives of the petitioners record the caste as “Mana”, in some pre-constitution

documents, the caste is recorded as “Kunbi”. The post-constitution documents refer to the caste as Hindu Mana, Mane and Mani. It would not be necessary to delve deeper in the reasons recorded by the Scrutiny Committee while rejecting the caste claim. Suffice it to note, that one circumstance which weighed with the Scrutiny Committee was existence of entries such as ‘Kunbi’ and ‘Mani’.

3. This petition was heard at length along with certain other petitions which also questioned the refusal of the scrutiny committee to validate the caste certificate of “Mana”, Scheduled Tribe.

4. During the course of hearing, learned counsel for the petitioners Mr. Ananta Ramteke relied on certain observations of the coordinate Bench in (1) *Gajanan s/o Pandurang Shende Vs. Head-Master, Govt. Ashram School, Dongargaon Salod and others [2018(2) Mh.L.J. 460]*, which decision was rendered on 8-11-2017, (2) *Gitesh s/o Narendra Ghormare Vs. Scheduled Tribe Certificate Scrutiny Committee, Nagpur and others*

[2018(4) *Mh.L.J.* 933], which was rendered on 2-7-2018 and (3) *Umesh s/o Ganeshrao Jambhore Vs. Vice-Chairman/ Member-Secretary, Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati and others* [2022(3) *Mh.L.J.* 31], which was rendered on 3-2-2022 (hereinafter referred to as *Gajanan Shende, Gitesh Ghormare* and *Umesh Jambhore*).

5. Learned Additional Government Pleader Mr. Ukey and learned Assistant Government Pleader Mr. Pathan would submit, that certain observations in *Gajanan Shende, Gitesh Ghormare* and *Umesh Jambhore* are inconsistent with, and militate against, the authoritative enunciation of the Hon'ble Supreme Court and there is further a cleavage of opinion in the decisions of the coordinate Benches of this Court.

6. Mr. Ukey and Mr. Pathan have invited our attention to the Constitution Bench decision in *B. Basavalingappa Vs. D. Munichinnappa and others* [AIR 1965 SC 1269 (V 52 C 204)], the Constitution Bench decision in *Bhaiya Lal Vs. Harikishan Singh and others* [AIR 1965 SC 1557 (V 52 C263)], the two

Judges decision of the Hon'ble Supreme Court in ***Parsram and another Vs. Shivchand and others [1969(1) SCC 20]***, three Judges decision in ***Srish Kumar Choudhury Vs. State of Tripura and others [1990 (Supp) SCC 220]***, the three Judges decision of the Hon'ble Supreme Court in ***Nityanand Sharma and another Vs. State of Bihar and others [(1996) 3 SCC 576]***, the Constitution Bench decision of the Hon'ble Supreme Court in ***State of Maharashtra Vs. Milind and others [2001(1) Mh.L.J. 1]***, the three Judges decision of the Hon'ble Supreme Court in ***The State of Maharashtra Vs. Keshao Vishwanath Sonone [2021(4) ALL MR 784 (S.C.)]***. Reference was also made to the coordinate Bench decision in ***Mana Adim Jamat Mandal Vs. State of Maharashtra and others [2003(3) Mh.L.J. 513]*** and the decision of the Hon'ble Supreme Court in ***State of Maharashtra and others Vs. Mana Adim Jamat Mandal [(2006) 4 SCC 98]***.

7. Mr. Ukey and Mr. Pathan have also brought to our notice the coordinate Bench decisions in ***Writ Petition 3869 of 2008 (Omkar s/o Ashokkumar Narnaware Vs. Committee for Scrutiny and Verification of Tribe Claims and another)*** dated

21-1-2009, *Writ Petition 878 of 2009 (Sandeep s/o. Deorao Jiwtode Vs. Committee for Scrutiny and Verification of Tribe Claims, Amravati and ors.)* dated 4-3-2009, *Writ Petition 4636 of 2007 (Omprakash Deorao Dharne Vs. The Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati and anr.)* dated 29-8-2009, *Writ Petition 5344/2011 (Ku. Minakshi Gulabrao Narnaware Vs. The Scheduled Tribe Caste Certificate Scrutiny Committee and others)* dated 20-4-2012 and the decision in *Writ Petition 996 of 2018 (Priya Pramod Gajbe Vs. State of Maharashtra and ors.)* dated 22-12-2018.

8. Learned counsel Mr. Ramteke and Mr. Khare would rely, in addition to *Gajanan Shende, Gitesh Ghormare* and *Umesh Jambhore* (supra), on the decisions in *Palghat Jilla Thandan Samudhaya Samrakshna Samithi and anr. Vs. State of Kerala and another [(1994) 1 SCC 359]* and *Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others [2011(6) Mh.L.J. 919]*.

9. Mr. Ukey and Mr. Pathan would urge, that the articulation in ***Gajanan Shende, Gitesh Ghormare*** and ***Umesh Jambhore*** are not in tune with the enunciation of the Hon'ble Supreme Court, and are further inconsistent with certain decisions of the coordinate Benches, and therefore, reference to a larger Bench is imperative. Before we spell out the observations and enunciation in ***Gajanan Shende, Gitesh Ghormare*** and ***Umesh Jambhore*** to which a reference is made by Mr. Ukey and Mr. Pathan, it would be apposite to notice the constitutional provisions to the extent relevant, and the law laid down by the Hon'ble Apex Court, on the touchstone of which we shall be examining whether a reference is necessary.

10. Article 342 of the Constitution of India reads thus :

342. Scheduled Tribes. - (1) *The President [may with respect to any State [or Union territory], and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State [or Union territory, as the case may be].*

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

[342-A. Socially and educationally backward classes. - *(1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the socially and educationally backward classes which shall for the purposes of this Constitution be deemed to be socially and educationally backward classes in relation to that State or Union territory, as the case may be.*

(2) Parliament may by law include in or exclude from the Central List of socially and educationally backward classes specified in a notification issued under clause (1) any socially and educationally backward class, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

The corresponding provision as regards Scheduled Castes is Article 341.

11. Article 366 (25) defines “Scheduled Tribes” to mean such tribes or tribal communities or parts of or groups within

such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of the Constitution.

[Note : Expression “Scheduled Castes” is defined similarly in Article 366(24).]

12. The mandate of Articles 341 and 342 is that while an enquiry is permissible, and indeed expected, before inclusion of a caste or tribe, in the Presidential Order, the list of the Scheduled Castes and Scheduled Tribes specified in the Presidential Order can be amended only by the Parliament, by enacting a law. Inclusion or exclusion from the list specified in the Presidential Order/s by any other mode is not constitutionally permissible.

13. The Constitution Bench decision of the Hon’ble Supreme Court in ***B. Basavalingappa*** (supra) is often pressed in service in support of the submission that while the list in the Presidential Order cannot be tinkered with, and inclusion or exclusion from the list can be done only by the Parliament by enacting law, it is nonetheless permissible to make a limited

enquiry in order to ascertain whether caste or tribe “B” or “C” is the same caste or tribe “A” mentioned in the Presidential Order. It would, therefore, be apposite to first consider the enunciation and ratio of ***B. Basavalingappa***.

14. The factual matrix considered by the Constitution Bench was slightly peculiar. While the Presidential Order mentioned the caste ‘Bhovi’, as a fact the Hon’ble Supreme Court found it to be an incontrovertible position that there was no caste known as ‘Bhovi’ in the Mysore State. Hon’ble Supreme Court in ***B. Basavalingappa*** observes that as the President could not have intended to include in the order, a non-existent caste, the word “Bhovi” relates to some caste in Mysore as it was before 1956. It was in the backdrop of the glaring facts, that an enquiry was done to ascertain the caste which was intended to be included in the Presidential Order.

15. ***Bhaiya Lal*** (supra) which is also a decision of the Constitution Bench articulates that an enquiry to determine whether or not a particular caste is included in the Presidential

Order is not permissible and it is only the Presidential Order which can be looked into. Considering **B. Basavalingappa**, it is observed in **Bhaiya Lal** thus :

“(8) Incidentally, we may point out that the plea that the Dohar caste is a sub-caste of the Chamar caste cannot be entertained in the present proceedings in view of the Constitution (Scheduled Castes) Order, 1950. This Order has been issued by the President under Art. 341 of the Constitution. Article 341 (1) provides that the President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races, or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be. Sub-Article (2) lays down that Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification. It is thus clear that in order to determine whether or not a particular caste is a scheduled caste within the meaning of Art. 341, one has to look at the public notification issued by the President in that behalf. In the present case, the notification refers to Chamar, Jatav or Mochi, and so, in dealing with the question in dispute between the parties, the enquiry which the Election Tribunal can hold is whether or not the appellant is a Chamar, Jatav or Mochi. The plea that

though the appellant is not a Chamar as such, he can claim the same status by reason of the fact that he belongs to the Dohar caste which is a sub-caste of the Chamar caste, cannot be accepted. It appears to us that an enquiry of this kind would not be permissible having regard to the provisions contained in Art. 341. In the case of B. Basavalingappa v. D. Munichinnappa, Civil Appeal No.401 of 1964, dated 23-9-1964; (reported in AIR 1965 SC 1269), this Court had occasion to consider a similar question. The question which arose for decision in that case was whether respondent No. 1, though Voddar by caste, belonged to the scheduled caste of Bhovi mentioned in the Order, and while holding that an enquiry into the said question was permissible, the Court has elaborately referred to the special and unusual circumstances which justified the High Court in holding that Voddar caste was the same as the Bhovi caste within the meaning of the Order; otherwise the normal rule would be :

“it may be accepted that it is not open to make any modification in the Order by producing evidence to show, for example, that though caste A alone is mentioned in the Order, caste B is also a part of caste A and, therefore, must be deemed to be included in caste A.”

That is another reason why the plea made by the appellant that the Dohar caste is a sub-caste of the Chamar caste and as such must be deemed to be included in the Order, cannot be accepted.

(9) Whilst we are referring to this aspect of the matter, we may point out that the Order has taken good care to specify different castes under the same heading where enquiry showed that the same caste bore different

names, or it had sub- castes which were entitled to be treated as scheduled castes for the purposes of the Order. In the district of Datia, for instance, entry 3 refers to Chamar, Ahirwar, Chamar Mangan, Mochi or Raidas. Similarly, in respect of Maharashtra, Item 1, entries 3 and 4 refer to the same castes by different names which shows either that the said castes are known differently or consist of different sub-castes. Likewise, item 2, entry 4 in the said list refers to Chamar, Chamari, Mochi, Nona, Rohidas, Ramnami, Satnami, Surjyabanshi or Surjyaramnami. It is also remarkable that in Maharashtra in certain districts Chambhar and Dhor are included in the list separately. Therefore, we do not think that Mr. Chatterjee can seriously quarrel with the conclusion of the High Court that the appellant has not shown that he belongs to the Chamar caste which has been shown in the Order as a scheduled caste in respect of the Constituency in question.”

16. ***Parsram*** (supra), which is a decision of two Judges Bench, holds that neither the gazetteers nor the glossaries on the Punjab castes and tribes can be looked into, and the question whether Mochi and Chamar refer to the same caste is not open to agitation by evidence and is within the exclusive power of the President.

17. ***Srish Kumar Choudhury*** (supra) emphasizes that while an enquiry is contemplated before the Presidential Order is

made, any inclusion or exclusion thereafter can only be by legislation. We extract the relevant observations verbatim.

“20. The two Constitution Bench judgments indicate that enquiry is contemplated before the Presidential Order is made but any amendment to the Presidential Order can only be by legislation. We do not think we should assume jurisdiction and enter into an enquiry to determine whether the three terms indicated in the Presidential Order include Deshi Tripura which covers the Laskar community; but we consider it appropriate to commend to the authorities concerned that as and when the question is reviewed it should be examined whether the claim of the appellant representing the Laskar community to be included in the scheduled tribes is genuine and should, therefore, be entertained.”

18. **Nityanand Sharma** (supra) observes that it is for the Parliament to amend the Presidential Order and the Court has no power to declare synonyms as equivalent to the tribes specified in the Order. The three Judges Bench, however, holds that evidence may be admissible to a limited extent of finding out whether the community was, in fact, included in the schedule concerned, and qualifies the said observation by declaring that the Court is devoid of power to include in or

exclude from or substitute or declare synonym to be a Scheduled Caste or Scheduled Tribe.

19. The Constitution Bench decision in ***Milind*** (supra), while setting aside the decision of this Court, considers several decisions of the Constitution Bench and the Division Benches of the Hon'ble Supreme Court and concludes thus :

“26. Being in respectful agreement, we reaffirm the ratio of the two Constitution Bench judgments aforementioned and state in clear terms that no enquiry at all is permissible and no evidence can be let in, to find out and decide that if any tribe or tribal community or part of or group within any tribe or tribal community is included within the scope and meaning of the concerned Entry in the Presidential Order when it is not so expressly or specifically included. Hence, we answer the question no. 1 in negative.”

20. ***Milind*** further holds that the entries in the Presidential Order issued under Articles 341 and 342 of the Constitution of India cannot be tinkered with on the basis of orders/circulars issued by the State Government. We may extract the conclusions recorded by the Constitution Bench in ***Milind*** verbatim.

“34. In the light of what is stated above, the following positions emerge :—

- 1. It is not at all permissible to hold any enquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the concerned Entry in the Constitution (Scheduled Tribes) Order, 1950.*
- 2. The Scheduled Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it.*
- 3. A notification issued under Clause (1) of Article 342, specifying Scheduled Tribes, can be amended only by law to be made by the Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under Clause (1) of Article 342 only by the Parliament by law and by no other authority.*
- 4. It is not open to State Governments or courts or tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under Clause (1) of Article 342.*
- 5. Decisions of the Division Benches of this Court in Bhaiya Ram Munda vs. Anirudh Patar & others, 1971(1) SCR 804 and Dina vs. Narayan Singh, 38 ELR 212, did not lay down law correctly in stating*

that the enquiry was permissible and the evidence was admissible within the limitations indicated for the purpose of showing what an entry in the Presidential Order was intended to be. As stated in position (1) above no enquiry at all is permissible and no evidence can be let in, in the matter.”

21. This Court rendered common judgment dated 14-8-2018 in bunch of petitions declaring that the “Gowari” community in the State of Maharashtra cannot be denied the benefits of the Scheduled Tribe and that “Gowari” is the tribe “Gond Gowari” listed as Entry 18 in the Presidential Order. The said decision of the coordinate Bench is set aside by the Hon’ble Supreme Court in **Keshao Vishwanath Sonone** (supra). After analysing the earlier decision including the decision in **B. Basavalingappa**, the Hon’ble Supreme Court articulated thus :

*“61. In view of the ratio of judgments of this Court as noticed above, the conclusion is inescapable that the High Court could not have entertained the claim or looked into the evidences to find out and decide that tribe “Gowari” is part of Scheduled Tribe “Gond Gowari”, which is included in the Constitution (Scheduled Tribes) Order, 1950. It is further clear that there is no conflict in the ratio of Constitution Bench judgments of this Court in **B. Basavalingappa’s** case [1964 ALLMR ONLINE 326 (S.C.)] and **State of Maharashtra Vs. Milind and Ors.***

*[2001(1) ALL MR 573 (S.C.)] (supra). The ratio of B. Basavalingappa's case as noted in paragraph 6 of the judgment and extracted above is reiterated by subsequent two Constitution Bench judgments in **Bhaiya Lal's** case and **Milind's** case. There being no conflict in the ratio of the above Three Constitution Bench judgments, we do not find any substance in submission of Shri Rohatgi that for resolving the conflict, the matter need to be referred to a larger Constitution Bench. We, thus, answer question Nos.1 and 2 in following words:-*

- (i) The High Court in the writ petition giving rise to these appeals could not have entertained the claim of a caste "Gowari" that it be declared a Scheduled Tribe as "Gond Gowari" included at Entry No.18 of the Constitution (Scheduled Tribes) Order, 1950 nor High Court could have taken evidence to adjudicate the above claim.*
- (ii) There is no conflict in the ratio of the judgment of Constitution Bench of this Court in **Basavalingappa's** case and **Milind's** case."*

22. **Mana Adim Jamat Mandal** (supra) considers a reverse situation. In the teeth of Entry 18 "Mana", the Government issued Government Resolution (G.R.) declaring "Mana" community as Special Backward Class. The coordinate Bench held, and the Hon'ble Supreme Court approved, that the Presidential Order cannot be tinkered with by the State Government by issuing G. R. and that evidence cannot be adduced to interpret or construe entry in the Presidential Order.

23. The law appears to be well settled. While an enquiry is permissible before inclusion of a caste or tribe in the Presidential Order, the entry in the Presidential Order cannot be interpreted or construed by conducting an enquiry or allowing evidence to be adduced, in whatsoever form. It is the exclusive power of the Parliament to amend the Presidential Order by enacting law, and no tinkering with the Presidential Order/s is permissible, by conducting an enquiry to ascertain whether caste or tribe “B” is a synonym for caste or tribe “A” referred to in the Presidential Order.

24. We may now consider the observations in ***Gajanan Shende, Gitesh Ghormare*** and ***Umesh Jambhore***, which according to Mr. Ukey and Mr. Pathan, militate against the authoritative exposition of the Hon’ble Supreme Court and are contrary to and inconsistent with certain decisions of the coordinate Benches.

25. The challenge in ***Gajanan Shende*** was to the decision of the scrutiny committee of invalidating the claim of the

petitioner as belonging to “Mana”, Scheduled Tribe. We are not required to elaborately consider the reasons recorded by the coordinate Bench for allowing the petition. The observations, which according to Mr. Ukey and Mr. Pathan, are contrary to the settled position, read thus :

“18. Applying the law laid down in E.V. Chinnaiah’s case, it has to be held in the facts of the present that once it is clear that ‘Mana’ community is included in entry No.18 of the Constitution (Scheduled Tribes) Order, it has to be read as it is, representing a class of ‘Mana’ as a whole and it is not permissible either for the Executive or for the Scrutiny Committee to artificially sub-divide or sub-classify ‘Mana’ community as one having different groups, like ‘Badwaik Mana’, ‘Khand Mana’, ‘Kshatriya Mana’, ‘Kunbi Mana’, ‘Maratha Mana’, ‘Gond Mana’, ‘Mani/Mane’, etc., for the purposes of grant of benefits available to a recognized Scheduled Tribe. To exclude such persons from the entry ‘Mana’, to be recognized as Scheduled Tribe, amounts to interference, re-arrangement, re-grouping or re-classifying the caste ‘Mana’, found in the Presidential Order and would be violative not only of Article 342, but also of Article 14 of the Constitution of India. The classification of entry ‘Mana’ in different categories, like ‘Badwaik Mana’, ‘Khand Mana’, ‘Kshatriya Mana’, ‘Kunbi Mana’, ‘Maratha Mana’, ‘Gond Mana’, ‘Mani’/’Mane’, etc., for the purpose of conferring a status as a recognized Scheduled Tribe is artificial and without any authority. The Committee has, therefore, committed an error in

rejecting the claim by holding that the documents produced simply indicate the caste 'Mana' and not 'Mana, Scheduled Tribe'.

19. *In our view, the concept of recognized Scheduled Tribe for the purposes of giving benefits and concessions was not prevailing prior to 1950 and, therefore, only caste or community to which a person belonged was stated in the birth, school and revenue records maintained. The documents are issued in the printed format, which contains a column under the heading 'Caste' and there is no column of tribe. Irrespective of the fact that it is a tribe, the name of tribe is shown in column of caste. While entering the name, the distinction between caste and tribe is ignored. It is the entire 'Mana' community all over the State, which is conferred a status of a recognized Scheduled Tribe in the State. The entry 'Mana' at serial No.18 in the Constitution (Scheduled Tribes) Order has, therefore, to be read as it is and no evidence can be led to exclude certain communities of 'Mana' from granting protection or benefits. The finding of the Committee to that extent cannot, therefore, be sustained."*

26. The coordinate Bench which decided **Gajanan Shende** did observe that Entry 18 of the Presidential Order as amended, has to be read as it is. Having so observed, the coordinate Bench further held that the entry must be read as representing a class of "Mana" as a whole and the Mana tribe cannot be sub-classified or sub-divided as having different

groups like 'Badwaik Mana', 'Khand Mana', 'Kshatriya Mana', 'Kunbi Mana', 'Maratha Mana', 'Gond Mana', 'Mani'/'Mane', etc. **Gajanan Shende** holds that no evidence can be lead to exclude certain communities of "Mana" from the Presidential Order.

27. In **Gitesh Ghormare**, the scrutiny committee found that the documents recorded entries like 'Mane Ku', 'Mana Ku', 'Ku Mana', 'Mana Kunbi', 'Patil Mana', 'Mane', 'Mani', 'Kunbi' etc.

(i) The coordinate Bench passed order dated 27-6-2018, which we may extract verbatim.

"We put a specific question to the learned AGP appearing for the Scrutiny Committee as to whether the entry 'Patil Mana' referred to in the order impugned, as shown in the documents represents altogether a different caste than 'Mana - Scheduled Tribe'. The answer is that there exists no caste like 'Patil Mana' and the 'Patil' is the suffix to the surname.

We then asked a specific question to the learned AGP appearing for the Scrutiny Committee, as to how entry 'Mane Ku' referred to in the impugned order, as shown in the documents, is understood by the Committee. The petitioner and his forefathers are resident of village Kumbli and the contention of the petitioner is that 'Ku' indicating the short name of the village, is the suffix or prefix to the caste or tribe entry

'Mane' or 'Mana' and there is no separate caste or sub-caste, tribe or sub-tribe as "Ku Mana, Ku Mani, Mana Ku, or Mani Ku". Reliance is placed on the clarification by the Revenue Department which issued such documents. We therefore expect the learned AGP appearing for the Scrutiny Committee to highlight before us the position in respect of it.

It is informed to us that certain documents were produced by the petitioner during the course of hearing, but the same were not forwarded to the Police Vigilance Cell for verification. We wanted to know from the Committee as to whether such documents were taken into consideration by the Committee without sending it for verification through the Police Vigilance Cell in exercise of its power under Rule 12(2) of the Rules, particularly if the findings are recorded in respect of these documents on their merits.

We also asked a specific question in respect of document at Sr. No.92, which is referred to as a zerox copy of the form of mutation register in respect of Kasi s/o Puna and Budeshwar s/o Mna or Mana issued on 13.09.1939. The finding of the Committee is that during the vigilance enquiry, the Naib Tahsildar, Sakoli orally informed that such record was never issued by their office. We were represented to believe in this regard the letter dated 24.08.2017 produced before us, issued from the office of Naib Tahsildar, Sakoli and we find that it was in response to the communication dated 24.08.2017 in which the query was in respect of birth entries of certain blood relatives of the petitioner. We wanted the explanation of the Committee in respect of it.

The Police Vigilance Cell Report in respect of document P-6 'kista bandi khatawani Form B-1' of the year 1938-39, in the name of "Dudeshwar vald Mna Patil Mana' is referred to and it is stated that such document is not available. But we are shown such document at page 238 of the petition and we find that the entry in respect of Dudeshwar is of 'Mana Kunbi'. We therefore put a specific question to the learned AGP appearing for the Scrutiny Committee, as to whether the Scrutiny Committee wants to rely upon this document, particularly when this document is said to be non-existent by the Police Vigilance Cell.

We asked a specific question to the learned AGP appearing for the Scrutiny Committee to tell us as to whether "Mana Kunbi" is a separate caste in existence.

We direct the Committee to provide us a list of documents on which reliance is placed to reject the claim.

The Committee is expected to answer all these questions by tomorrow.

*Put up on tomorrow, **28.06.2017.**"*

(ii) In paragraph 14, the coordinate Bench noted that the learned AGP for the Committee confirmed that there is no separate caste or tribe called 'Patil Mana', and 'Patil'. We may note that the statement of the learned AGP, assuming that such statement was of any relevance to construe the entry in the

Presidential Order was restricted to 'Patil Mana' which the learned AGP claimed was only suffix to the surname, and to the stand of the Committee that there is no separate caste or tribe by name 'Mana Kunbi' included in the list of Scheduled Caste, Scheduled Tribe, Other Backward Class or Special Backward Class, in the State of Maharashtra.

(iii) In paragraph 18 of the decision, the Anthropological Survey of India Publication is noticed. We find it necessary to extract verbatim the observations in paragraph 18 of the decision.

“18. In the publication of Anthropological Survey of India, styled as 'People of India (Maharashtra), Volume XXX, Part Two', it is stated that the caste 'Mana' is also known as 'Mane' or 'Mani'. It is stated that etymologically, the word 'Mana' was probably derived from the word 'Mannya' or 'Mann', i.e. honour, which the community held in high esteem. The Government Resolution dated 24-4-1985 also highlights the position that 'Mana' is known as 'Mane', 'Mani'. The Committee also does not dispute such position. It is neither the finding recorded by the Scrutiny Committee nor the fact that any separate caste or tribe or sub- caste/tribe as 'Mane', 'Mani' or 'Mannya' exists in the State of Maharashtra. Such castes/tribes are also not shown in the list of Vimukta

Jatis, Nomadic Tribes, Other Backward Classes or Special Backward Classes maintained by the State Government. It is, therefore, of no significance that the community is described as 'Mana', 'Mani', 'Mane' or 'Mannya' and the entries have to be treated as that of 'Mana'. The Committee has, therefore, erred in relying upon the entries of 'Mane' and 'Mani' to reject the claim."

28. **Gitesh Ghormare** refers to the G.R. dated 24-4-1985 and observes that the said G.R. highlights the position that "Mana" is known as "Mane" and "Mani" and that the Committee does not dispute such position. The coordinate Bench has, with utmost respect, conducted an enquiry and permitted evidence to be adduced by referring to the Anthropological Survey of India Publication, the G.R. dated 24-4-1985 and the statements made by the learned AGP on behalf of the scrutiny committee, and we have our own reservations whether such course was permissible.

29. **Umesh Jambhore** follows **Gajanan Shende** and **Gitesh Ghormare**. *The factual matrix in Umesh Jambhore* may be noticed briefly. The documents which came to light in the vigilance cell enquiry revealed that the caste of the paternal relatives of the petitioners was recorded as 'Mana', 'Mani' and

‘Mane Kunbi’. In paragraph 10, the observations in ***Gitesh Ghormare*** are extracted *in extenso*. In paragraph 11, the coordinate Bench noted that in ***Gitesh Ghormare***, there was specific question put to the learned AGP as to whether ‘Mane Kunbi’ is separate caste in existence, and in response, the AGP stated that there is no separate caste or tribe by name ‘Mane Kunbi’ included in the list of Scheduled Caste, Scheduled Tribe, OBC and SBC categories in the State of Maharashtra. In paragraph 13, the coordinate Bench observes that while the interpretation, clarification and explanation of the entries in Scheduled Tribes Order is not permitted, the interpretation of the entries in the documents cannot be construed with the interpretation of entry in the Scheduled Tribes Order. In paragraph 14, the coordinate Bench again refers to the proceedings in ***Gitesh Ghormare*** and the question put to the learned AGP and the answer received in response.

30. With utmost respect to the learned Judges who have decided ***Gajanan Shende, Gitesh Ghormare and Umesh Jambhore***, we are not persuaded to fall in line with the

articulation in the said decisions, to a certain extent. We are of the considered view, that the submission of Mr. Ukey and Mr. Pathan that a reference to larger Bench is imperative, is well founded, and we may briefly pen our reasons for having arrived at such conclusion.

31. We have noted the enunciation of the Hon'ble Supreme Court in several decisions, and in the interest of avoiding prolixity, we would not dilate further. Broadly, it appears to be fairly well settled, at least to us, that an entry in the Presidential Order must be read as it is, and cannot be interpreted or construed with the aid of extrinsic material. The court is precluded from making an enquiry and considering evidence to arrive at a finding that caste or tribe "B" is the same caste or tribe "A" included in the Presidential Order. In our humble, albeit considered view, the entry "Mana" at Serial 18 in the Presidential Order could not have been interpreted or construed with the aid of the publications or on the basis of the response of the learned AGP to the court questions. The Hon'ble Supreme Court has highlighted that wherever the Presidential

Order deemed fit to include the caste or tribe as synonym, such exercise has been done. Even if it is assumed arguendo, that there is a group or community which is known by some other name and which could not have been treated differently than “Mana”, it is for the Parliament to address the issue by enacting law. Such result cannot be achieved by undertaking an enquiry or by referring to the publications or the recitals in the Government Resolutions much less by seeking clarification from the scrutiny committee or its counsel. ***Gajanan Shende, Gitesh Ghormare*** and to certain extent ***Umesh Jambhore*** which heavily relies on ***Gitesh Ghormare***, are not consistent with and indeed militate against the authoritative exposition of the Hon’ble Supreme Court.

32. We further respectfully disagree with the approach of the coordinate Bench in ***Gitesh Ghormare***, which first assumes by undertaking an inquisitorial exercise that ‘Mani’, ‘Mane’, ‘Mana Kunbi’ etc. are the same tribe “Mana”, which is included in the Presidential Order and then holds that exclusion of such tribes from the benefits of the reservation is tinkering with the

Presidential Order. We may respectfully observe, that it is the first part of the exercise, which assumes that there are several groups and communities like 'Mane', 'Mani', 'Mana Kunbi' etc. which are synonyms of "Mana", that has the unintended effect of tinkering with the Presidential Order and not the latter part of exclusion.

33. We therefore direct the Registry to place the papers before the Hon'ble the Chief Justice to consider constitution of Larger Bench to decide the correctness of the observations and findings in ***Gajanan Shende, Gitesh Ghormare and Umesh Jambhore***. Some questions which may be considered for reference may be formulated thus :

- (A) Whether ***Gajanan Shende, Gitesh Ghormare and Umesh Jambhore*** militate against the authoritative exposition of the Hon'ble Supreme Court, to the extent certain groups or communities like Mani, Mane, Mana-Kunbi etc. are held to be the Scheduled Tribe (Mana) included as Entry 18 in the Presidential Order as amended ?

- (B) Whether extensive reference and reliance on the publications, the Government Resolution/s and the answers elicited from the Scrutiny Committee during the proceedings partake the character of a post Presidential Order Enquiry and if the answer is in the affirmative, whether such an enquiry is permissible to interpret or construe the entries in the Presidential Order ?
- (C) Whether the exercise of interpreting and construing documentary material can transgress in the arena of inquisitorial enquiry post Presidential Order ?
- (D) The contours, scope, ambit and limitations of the enquiry assuming such an enquiry is permissible of interpreting and construing documentary material which record a particular caste or tribe ?

(Mrs. Vrushali V. Joshi, J.)

(Rohit B. Deo, J.)

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