

(2017) 11 BOM CK 0189
In the Bombay High Court
Case No : 5927 of 2013

Ashu

APPELLANT

Vs

The Scheduled Tribe Caste

RESPONDENT

Date of Decision : 29-11-2017

Acts Referred:

[Constitution of India](#), [Article 14](#), [Article 342](#) - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Scheduled Tribes

Citation : (2017) 11 BOM CK 0189

Hon'ble Judges : R.K. Deshpande, M.G. Giratkar

Bench : DIVISION BENCH

Advocate : S.P. Khare, M.K. Pathan

Judgement

1. This petition challenges the order dated 8-10-2013 passed by the Scheduled Tribe Certificate Scrutiny Committee, Nagpur Division, Nagpur, invalidating the caste claim of the petitioner for "Mana, Scheduled Tribe", which is an entry at Serial No.18 in the Constitution (Scheduled Tribes) Order, 1950 and cancelling and confiscating the caste certificate dated 21-3-2009 issued by the SubDivisional Officer, Katol, certifying that the petitioner belongs to "Mana, Scheduled Tribe".

2. Before the said Committee, the petitioner produced total thirtyone documents in support of her claim for "Mana, Scheduled Tribe". Out of these documents, the documents at Serial Nos.1, 27 and 30 were the affidavits swornin before the Executive Magistrate, Nagpur and Katol, stating that the petitioner and her blood relatives belong to "Mana, Scheduled Tribe". The documents at Serial Nos.3, 20 and 21 were the caste certificates of the petitioner and her blood relatives. In the documents at Serial Nos.4 and 5, the caste of the petitioner was not mentioned. The document at Serial No.10 was the copy of the first page of the servicebook in the name of the petitioner's father. The documents at Serial Nos.14, 16, 18 and 22 were the xerox copies of the caste certificates of the cousin sisters and

cousin brother of the petitioner. The document at Serial No.28 was the affidavit of the real sister of the petitioner. In respect of all these documents, the Committee records the finding that none of these documents can be relied upon, as the same are subject to verification and scrutiny by it.

3. The Committee considered the documents at Serial Nos.15, 17, 19 and 23, which were the xerox copies of the caste validity certificates issued in the names of the petitioner's cousin sisters Ku. Mohini, Ku. Kusum and Ku. Durga, and the cousin brother Tikaram. The documents at Serial Nos.11 and 13 were also the caste validity certificates issued in the names of Baburao, the cousin uncle, and Jagdish, the real uncle of the petitioner. The Committee holds that these documents cannot be relied upon, as the same were issued as per the decision of the Apex Court in Civil Appeal No.5270 of 2004.

4. The Committee relies upon the entry dated 14-4-1925 in the name of Bhakya Vyankati, the grandfather of the petitioner, at Serial No.233 in the school admission register, describing his caste as "Mani". It also relies upon the caste entry in the birth register in the name of Dattu Bhikaram, the father of the petitioner, as "Mani", and in the school admission register as "Mane". The Committee holds that the Scheduled Tribe entry must be read as it is, and the entries "Mani" or "Mane" in respect of the paternal blood relations of the petitioner cannot be construed as "Mana". The Committee also holds that in the documents at Serial Nos.1, 2, 3, 4, 5, and 6 in para 4 of the order, in the names of Bhakya, the grandfather; Dattu, the father; and Ramrao, Pundlik and Bhaiyya, the cousin uncles, the castes were recorded as "Mani" and "Mane" in the years 1918, 1941, 1942, 1946, 1950 and 1951. The petitioner has, therefore, failed to establish her claim for "Mana". The Committee also applies the affinity test and rejects the claim of the petitioner.

5. The said Committee has dealt with the caste entries of "Mani" and "Mane" in the aforesaid six documents, referred to in para 4 of the order, in the names of grandfather, father and cousin uncles of the petitioner. It is neither the finding recorded by the Scrutiny Committee nor it is a fact that any separate caste/tribe or subcaste/ tribe as "Mane" or "Mani" exists in the State of Maharashtra. Such castes are also not shown in the lists of Vimukata Jatis, Nomadic Tribes, Other Backward Classes or Special Backward Classes maintained by the State Government for grant of benefits. In the publication of anthropological survey of India, styled as "People of India (Maharashtra), Volume XXX, Part Two", the caste "Mana" is dealt with and it recites that "Mana" is also known as "Mane" or "Mani". It states that etymologically, the word "Mana" was probably derived from the word "Mannya" or "Mann", i.e. honour, which the community held in high esteem.

6. We have noticed from the report of the Police Vigilance Cell, which conducted an enquiry on 28-7-2010, 6-8-2010 and 21-12-2010, that in relation to the first entry of the year 1918 in the name of Bhakya Vyankati, the grandfather of the petitioner, there is a discrepancy in the entry at Serial No.233 of the school

admission register, wherein the caste is shown as "Mani", and the entry was made on 14-4-1925. As against this, in the extract of the birth register entry of the same school, the caste recorded is "Mana" and the date of birth is shown as 1-1-1918. Similarly, the entry in the school admission register in the name of Dattu Bhikaram, the father of the petitioner, the caste is shown as "Mane", whereas the entry in the birth register of the school shows the caste "Mani".

7. The confusion prevailing in the old records gets clarified by subsequent entries. The primary school leaving certificate in the name of Dattu, the father of the petitioner, shows the caste "Mana", entered on 2-7-1955. The primary school leaving certificate in the name of Madhukar, the real uncle of the petitioner, shows the caste "Mana", entered on 13-7-1956. The secondary school leaving certificate in the name of Dattu, the father of the petitioner, shows the caste "Mana", entered on 30-7-1957. The college leaving certificate in the name of Jagdish, the uncle of the petitioner, shows the caste "Mana", entered on 24-6-1977. The primary school leaving certificate in the name of Ku. Shewanti, the real aunt of the petitioner, shows the caste "Mana", entered on 1-7-1959. All such documents of subsequent years produced clearly indicate the caste of the petitioner and his blood relatives as "Mana".

8. In the decision of this Court in the case of *Mana Adim Jamat Mandal v. State of Maharashtra and others*, reported in 2003(3) Mh.L.J. 513, which is confirmed by the Apex Court in its decision in the case of *State of Maharashtra & Ors. v. Mana Adim Jamat Mandal*, reported in (2006) 4 SCC 98, it was the argument advanced that there are nontribal communities, like "Badwaik Mana", "Khand Mana", "Kshatriya Mana", "Kunbi Mana", "Maratha Mana", "Gond Mana", "Mani"/"Mane", etc., in Vidarbha Region, and unless it is shown that they belong to "Mana, Scheduled Tribe" in Entry No.18, they are not entitled to the benefits of Scheduled Tribe. It was also pointed out that "Mana" Community is also included in the lists of Other Backward Classes and Special Backward Classes, and unless the affinity is established with "Mana, Scheduled Tribe", which is an entry at serial No.18, the benefits meant for it cannot be availed. We have considered this aspect in para 13 of the decision in the case of *Gajanan s/o Pandurang Shende v. The HeadMaster, Govt. Ashram School, Dongargaon Salod, Tah. Sindewahi, Distt. Chandrapur, and others*, rendered in Writ Petition No.3308 of 2013 on 8-11-2017, and we, therefore, reproduce the said paras as under : "13. In the decision of the Division Bench of this Court in the case of *Mana Adim Jamat Mandal v. State of Maharashtra and others*, reported in 2003(3) Mh.L.J. 513, it is held in para 22 as under :

"22. It is clear from the plain reading of the aforesaid propositions that the Supreme Court was of the view that Dina's case - 38 ELR 212 was not decided correctly to the extent it held that enquiry was permissible and evidence was admissible for the purpose of showing what an entry in the Presidential Order was intended to be. In fact the court has clearly observed that no enquiry at all is permissible and no evidence can be let in, in the matter. In our view the

Supreme Court decision in second Dina's case i.e. Dadaji @ Dina vs. Sukhdeo Baba and others which considered the effect of omission of the word "including", also cannot be taken to be good law after the decision of the Constitution Bench in State of Maharashtra vs. Milind, though the said decision is not expressly overruled. The Constitution Bench overruled the first Dina case i.e. Dina vs. Narayan Singh with reference to Entry 12 of the Scheduled Tribes Order though the court did not specifically refer to second Dina's case. It is needless to say that the same stood impliedly overruled as the law declared by the Constitution Bench in Milind's case was contrary to what was stated in second Dina's case."

In para 24 of the said decision, this Court has held as under :

"24. ... In any event even if it is assumed that there was a separate community which is called as Mana in Vidharbha region which has no affinity with Gond tribe that community would also fall within the scope of Scheduled Tribes Order by virtue of the Amendment Act, 1976 and the State Government was not entitled to issue orders or circulars or resolutions contrary thereto. 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 are entitled to be treated as a Scheduled Tribe by reason 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. The Mana community in the instant case having been listed in the Scheduled Tribes Order as it now stands, it is not open to the State Government or, indeed to this court to embark upon an enquiry to determine whether a section of Manas was excluded from the benefit of the Scheduled Tribes Order."

This view has been confirmed by the Apex Court in the case of State of Maharashtra & Ors. v. Mana Adim Jamat Mandal, reported in (2006) 4 SCC 98, and it is specifically held that "Mana" is a separate Scheduled Tribe by itself included in Entry No.18 of the Constitution (Scheduled Tribes) Order and it is not a subtribe of "Gond".

The Apex Court has held that "Mana" is a separate Scheduled Tribe by itself included in Entry No.18 of the Constitution (Scheduled Tribes) Order and it is not a subtribe of "Gond". The Division Bench of this Court in Mana Adim Jamat Mandal's case, cited supra, has held that it is not open to the State Government or indeed to this Court to embark upon an enquiry to determine whether a section of "Manas" was excluded from the benefits of the Scheduled Tribes Order. Following this decision, we have held in para 15 of Gajanan's case, cited supra, that the Committee was clearly in error in holding that "Mana" Community was included in the list of Other Backward Classes and later on in the list of Special Backward Classes, and though the petitioner has established that he belongs to "Mana" Community, it is not established that he belongs to "Mana, Scheduled Tribe".

9. In para 18 of Gajanan's case, we have considered the decision of the Apex Court in E.V. Chinnaiah v. State of Andhra Pradesh & Ors., reported in 2004(9) SCALE 316, and it is held as under "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 subdivide or subclassify "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, rearrangement, regrouping or reclassifying 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"."

We have held that "Mana" Community throughout the State is a class as a whole, and to artificially subdivide it to exclude different groups, like "Badwaik Mana", "Khand Mana", "Kshatriya Mana", "Kunbi Mana", "Maratha Mana", "Gond Mana", "Mani/Mane", etc., for denying the benefits of recognized Scheduled Tribe is not only without any authority but violative of Articles 14 and 342 of the Constitution of India.

10. In para 19 of Gajanan's case, we have held that 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. We have also held that the documents are issued in the printed format, which contains a column under the heading "Caste" and there is no column of Tribe. We have held that irrespective of the fact that it is a tribe, the name of tribe is shown in the column of Caste and while entering the name, the distinction between caste and tribe is ignored.

11. In view of the aforesaid position of law and the fact that there is no separate caste, subcaste, tribe or subtribe, like "Mani" or "Mane" prevailing in the State of Maharashtra, and that such entry like "Mani" or "Mane" is not included either in the lists of Vimukta Jatis, Nomadic Tribes, Other Backward Classes or Special Backward Classes in the State of Maharashtra, we are of the view that the Committee was in error in holding that the petitioner belongs to "Mani" or "Mane", which is not a tribe "Mana" in Entry No.18 in the Constitution

(Scheduled Tribes) Order. In our view, the confusion prevailing in respect of entry like "Mani"/"Mane" is absolutely clarified in all the subsequent documents pointed out earlier showing the caste of the petitioner and his blood relatives as "Mana" in all other documents and the Committee, therefore, could not have rejected the claim of the petitioner by taking into consideration the entries showing the caste "Mani" or "Mane".

12. It is not in dispute that the Committee has issued the validity certificates dated 25-6-2007 in the name of Baburao, the cousin uncle; dated 25-10-2006 in the name of Jagdish, the real uncle; dated 17-7-2008 in the name of Mohini, the cousin sister; dated 9-7-2008 in the name of Tikaram, the cousin brother; dated 24-10-2008 in the name of Kusum, the cousin sister; and dated 14-11-2008 in the name of Durga, the cousin sister of the petitioner, validating their claim for "Mana, Scheduled Tribe", which is an entry at Serial No.18 in the Constitution (Scheduled Tribes) Order. In view of the decision of this Court in Apoorva d/o Vinay Nichale v. Divisional Caste Certificate Scrutiny Committee No.1 and others, reported in 2010(6) Mh.L.J. 401, in our view, the Committee could not have taken a different view of the matter to hold that the petitioner has failed to establish her claim for "Mana, Scheduled Tribe", whereas her paternal blood relatives belonged to "Mana, Scheduled Tribe".

13. On the aspect of primacy of the documents over the affinity test, we rely upon the decision of the Apex Court in the case of Anand v. Committee for Scrutiny and Verification of Tribe Claims and others, reported in (2012) 1 SCC 113, and applying broad parameters laid down therein, we have to hold that the documents produced on record in the present case establish the claim of the petitioner for "Mana, Scheduled Tribe" in the absence of any other caste or tribe found in the documentary evidence produced on record. The Committee was in error in applying the affinity test to reject the claim of the petitioner. The order of the Scrutiny Committee cannot, therefore, be sustained.

14. In the result, the petition is allowed in the following terms : (i) The order dated 8-10-2013 passed by the Scheduled Tribe Certificate Scrutiny Committee, Nagpur Division, Nagpur, invalidating the caste claim of the petitioner for "Mana, Scheduled Tribe", is hereby quashed and set aside.

(ii) It is declared that the caste certificate dated 21-3-2009 produced by the petitioner showing her caste as "Mana, Scheduled Tribe", which is an entry at Serial No.18 in the Constitution (Scheduled Tribes) Order, 1950, is held to be valid.

(iii) The said Committee is, therefore, directed to issue validity certificate in the name of the petitioner accordingly within a period of one month from the date of production of copy of this judgment before it.

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