

(2017) 11 BOM CK 0167
In the Bombay High Court
Case No : 1394 of 2013

Diwakar s/o Sadashiv Wakade

APPELLANT

Vs

The Scheduled Tribe Caste Certificate Scrutiny Committee,
Gadchiroli, & Ors.

RESPONDENT

Date of Decision : 03-11-2017

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 0167

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

Bench : DIVISON BENCH

Advocate : Preeti Rane, N.S. Rao

Final Decision : Allowed

Judgement

1. The claim of the petitioner for grant of validity certificate as belonging to "Mana", Scheduled Tribe Category, which is an entry at serial No.18 in the Constitution (Scheduled Tribe) Order, 1950, has been rejected by the Scheduled Tribe Certificate Scrutiny Committee, Gadchiroli Division, Nagpur, by its order dated 11-10-2012, which is the subjectmatter of challenge in this petition.

2. The Committee records the finding that the entries in the school and revenue records of the blood relatives of the petitioner for the period from 1923-24 to 1950 consistently records the caste "Mana". However, all such documents are rejected mainly on the following reasoning :

(a) that "Mana" community was included in the list of Scheduled Tribes in relation to the State of Maharashtra for the first time in the year 1960, that too in the specified area only, and the petitioner has failed to establish that he or his forefathers hail from the said area and migrated to the present place of their residence, from the said specified scheduled area,

(b) that there are nontribal communities like "Badwaik Mana", "Khand Mana", "Kshatriya Mana", "Kunbi Mana", "Maratha Mana", "Gond Mana", "Mani"/"Mane", etc., and the petitioner has failed to satisfy crucial affinity test to establish that he belongs to "Mana, Scheduled Tribe", which is an entry at Serial No.18 in the Constitution (Scheduled Tribes) Order, 1950,

(c) that in the year 1967, "Mana" community was included in the list of Other Backward Classes at Serial No.268 and later on in the list of Special Backward Classes at Serial No.2 in relation to the State of Maharashtra, and

(d) that the documents produced simply indicate the caste as "Mana" and not "Mana, Scheduled Tribe".

3. In the decision of this Court in Writ Petition No.3308 of 2013 [Gajanan s/o Pandurang Shende v. The HeadMaster, Govt. Ashram School, Dongargaon Salod, Tah. Sindewahi, Distt. Chandrapur, and others] decided on 8-11-2017, we have dealt with all the aforesaid reasoning and we point out below what we have held in the said decision :

4. In para 5 of the decision in Gajanan's case, we have held that the Committee was wrong in holding that "Mana" community was included in the list of Scheduled Tribes Order in relation to the State of Maharashtra for the first time in the year 1960. We have also held that in fact, the said community was included in the said Order in the year 1956.

5. On the aspect of original place of residence and migration, we have held in para 7 of the said decision as under :

"7. ... The Act No.108 of 1976 was published in the gazette on 29-9-1976, and the area restriction of Scheduled Tribes in the State of Maharashtra for all the tribes, including "Mana" tribe, was deleted. The members of different tribes or communities in the State of Maharashtra included in Entry No.18, are treated and conferred with the status of recognized Scheduled Tribes, irrespective of their place of residence in the State. The net result of such deletion was that the twofold requirements of ordinary place of residence in tribal areas and migration to nontribal areas, was done away with."

6. Relying upon the decision of the Apex Court in the case of Jaywant Dilip Pawar v. State of Maharashtra & Ors., delivered in Civil Appeal No.2336 of 2011 on 8-3-2017, we have held in Gajanan's case that the petitioner was not required to establish that either his forefathers were the ordinary residents of the place meant for the tribals in the Constitution (Scheduled Tribes) Order prevailing prior to 1976 or that his forefathers migrated from the said area to the present place of residence. We have also held that the Committee was in error in taking such a view.

7. On the other aspect that there are nontribal communities like "Badwaik Mana", "Khand Mana", "Kshatriya Mana", "Kunbi Mana", "Maratha Mana", "Gond Mana", "Mani"/"Mane", etc., we have considered the impact of the Constitution

Bench decision of the Apex Court in the case of State of Maharashtra v. Milind, reported in 2001(1) Mh.L.J. 1, which overruled earlier decision in the case of Dina v. Narayansing, reported in 38 ELR 212. We have held in para 11 of the decision in Gajanan's case as under :

"11. ... The effect of overruling of the decision in Dina's case is that the entry "Mana", which is now in the cluster of tribes at Serial No.18 in the Constitution (Scheduled Tribes) Order, has to be read as it is and no evidence can be let in, to explain that entry "Mana" means the one which is either a "subtribe of Gond" or synonym of "Gond" and/or it is not a subtribe either of "Maratha" or of any other caste or tribe."

In para 12 of the said decision, we have held as under :

"12. ... To hold that "Mana" in Entry No.18 in the Constitution (Scheduled Tribes) Order does not include "Kashtriya Badwaik Mana", "Maratha Mana", "Kunbi Mana", etc., would amount to permitting evidence to be let in to exclude certain "Mana" communities from the recognized Scheduled Tribe. Such tinkering with the Presidential Order is not permissible. Once it is established that "Mana" is a tribe or even a subtribe, it is not permissible to say that it is not a recognized Scheduled Tribe in Entry No.18 of the Order. The Scrutiny Committee has failed to understand such effect of overruling the decision in Dina's case."

In view of the Constitution Bench decision in Milind's case, we hold that it is not permissible to invoke the affinity test to exclude certain "Mana" communities from the recognized Scheduled Tribe.

8. On the aspect of inclusion of "Mana" communities in the lists of Other Backward Classes and Special Backward Classes, we have relied upon the decision of this Court in Mana Adim Jamat Mandal v. State of Maharashtra, 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 v. Mana Adim Jamat Mandal, reported in (2006) 4 SCC 98. We have held in paras 13 and 14 of Gajanan's case as under :

"13. ... 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"."

"14. This Court has held and it is confirmed by the Apex Court in the aforesaid decisions that even if it is assumed that there was a separate entity, which is called as "Mana" in Vidarbha Region, which has no affinity with "Gond" tribe, that community would also fall within the scope of the 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. It holds 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 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. It further holds 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 benefit of the Scheduled Tribes Order."

The Apex Court has held that "Mana" is a separate Scheduled Tribe in Entry No.18 and it is not a subtribe of "Gond". The Division Bench of this Court 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 benefit of Scheduled Tribes Order. In para 15 of Gajanan's case, we have held 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. On the aspect of carving out a distinction that the documents of preIndependence, produced on record, simply indicating the caste as "Mana" and not "Mana Scheduled Tribe", we have relied upon the decision of the Apex Court in the case of E.V. Chinnaiah v. State of Andhra Pradesh, reported in 2004(9) SCALE 316. We have held in para 18 of Gajanan's case 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 after following the decision in E.V. Chinnaiah's case that "Mana" community throughout the State is a class as a whole and to artificially explain or subdivide it to exclude different groups like "Badwaik Mana", "Khand Mana", "Kshatriya Mana", "Kunbi Mana", "Mani"/"Mane", etc., for denying benefits of recognized Scheduled Tribe is not only without any authority but violative of Articles 14 and 342 of the Constitution of India. We have held that the Committee was in error in rejecting the claim by holding that the documents produced simply indicate the caste "Mana" and not "Mana Scheduled Tribe".

10. In para 19 of the said decision, 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 not shown in the column of caste, and while entering the name of caste or tribe, the distinction between the caste and the tribe is ignored.

11. On the aspect of primacy of documents over the affinity test, we have relied 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 applied the broad parameters laid down therein. We have held that in view of the said decision of the Apex Court that 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.

12. In support of the claim for "Mana", Scheduled Tribe Category, the petitioner produced before the Scrutiny Committee a school leaving certificate issued in the name of his paternal uncle Nathu Kawadu, showing the date of his admission in the school as 1-8-1953, and in the column of caste, entry "Mana" is shown. The Committee conducted an enquiry through the police vigilance cell, which found one document in the name of the real uncle of the petitioner, Maroti Zibla, which is a birth record, showing an entry "Mana" in the caste column, entered on 28-8-1928. Similarly, one another document in the name of Narayan Kawadu, shown to be the paternal uncle of the petitioner, wherein an entry "Mana" is recorded in the caste column on 22-2-1949 was also found.

13. The petitioner produced the school leaving certificate issued in the name of his paternal uncle Nathu Kawadu, which shows the caste "Mana" entered on 1-8-1953. The police vigilance cell constituted by the Committee itself traced out another document in the name of Maroti Zibla, the real uncle of the petitioner, in which the caste is shown as "Mana", entered on 28-8-1928. The relationship of the petitioner with Nathu Kawadu and Maroti Zibla is not in dispute. Merely because the caste "Mana" is shown in the list of Other Backward Class, prepared in the year 1960 and subsequently included in the list of Special Backward Class, the petitioner cannot be denied the status of "Mana", Scheduled Tribe Category

based upon the documents, more particularly in the name of Maroti Zibla, having a probative value, being a preconstitutional document.

14. So far as the question of affinity is concerned, once it is established that the document having a probative value pertaining to the period prior to 1950 is placed on record and the authenticity of it is not in dispute and the petitioner has established the relationship with the persons in whose names the document is executed, there is hardly any scope to reject the claim on the basis of the affinity test to exclude particular community of "Mana" from the entry at serial No.18 of the Constitution (Scheduled Tribes) Order, 1950 by leading evidence.

15. In the result, the petition is allowed. The order dated 11-10-2012 passed by the Scheduled Tribe Certificate Scrutiny Committee, Gadchiroli Division, Nagpur, invalidating the caste claim of the petitioner, is hereby quashed and set aside. It is held that the petitioner has established his claim as "Mana", which is an entry at serial No.18 in the Constitution (Scheduled Tribes) Order, 1950. The Scrutiny Committee is directed to issue a caste validity certificate to the petitioner accordingly, within a period of four weeks from the date on which he produces the copy of this judgment before it.

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