

(2018) 12 BOM CK 0151
In the Bombay High Court
Case No : Writ Petition No. 996 Of 2018

Priya Pramod Gajbe

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 22-12-2018

Acts Referred:

Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 &mdash ; Section 7, 8, 10, 11

Constitution of India, 1950 — Article 142, 226

Citation : (2018) 12 BOM CK 0151

Hon'ble Judges : Bharati H. Dangre, J;S.C. Dharmadhikari, J

Bench : Division Bench

Advocate : R.K. Mendadkar, Vikas Mali, Kiran Ajit Meher

Final Decision : Dismissed

Judgement

Bharati H. Dangre,J

1. The petitioner, a student who has secured admission in the first year of MBBS Degree Court in respondent No.4-College during the Academic year 2016-2017 has approached this Court assailing the order passed by the Scheduled Tribe Caste Certificate Scrutiny Committee, Kokan Division thereby invalidating her claim as belonging to Mana, Scheduled Tribe. The petition came to be filed on 16.01.2018 and this Court on 23.03.2018 was pleased to issue notice to the respondents and directed to maintain status-quo till next date of hearing. When the matter was listed before us, we directed the learned AGP Shri.Mali to produce before us the record of the Scrutiny Committee in relation to the invalidation of the petitioner's claim. We heard Shri.Mendadkar, the learned counsel for the petitioner in support of the claim of petitioner. In view of the issue involved in the Writ Petition we issue Rule and heard the matter finally by consent of parties.

2. The petitioner claims to be belonging to Mana, a Tribe which is recognized as

Scheduled Tribe. She obtained a certificate from Competent Authority on 08.06.2011 certifying that she belongs to Mana Tribe. Since, she was desirous of pursuing her higher studies by relying on the said caste certificate, her claim was made over to the Scheduled Tribe Certificate Scrutiny Committee, Kokan Division, Thane for verification. The claim was supported by the relevant documents. Pending the Scrutiny of the claim, the petitioner came to be admitted on a seat reserved for Scheduled Tribe in the first year of MBBS Degree Course during the academic year 2016-2017 in Dr.Vasantrao Pawar Medical College Hospital and Research Center at Nashik. At present she is prosecuting her studies in the second year of MBBS Degree Course.

The Scrutiny Committee by an order dated 12.12.2017, on consideration of the entire evidence brought on record, and by applying the Crucial Affinity Test and after taking into consideration the prevailing legal position arrived at a conclusion that the claim of the applicant as belonging to Mana, Scheduled Tribe is not established and it was held as invalid. The caste certificate issued in favour of the petitioner by the Sub-Divisional Officer, Thane came to be cancelled and confiscated by the impugned order.

3. The present Writ Petition poses a challenge to the said order. Shri.Mendadkar representing the petitioner would rely on the averments in the petition and would submit that the respondent No.2-Committee has failed to consider the evidentiary and probative value of the oldest documentary evidence on record in relation to the great grandfather of the petitioner from paternal side where caste in the birth record is reflected as Mana. This entry is effected as early as in the year 1924. Shri.Mendadkar would submit that respondent No.2-Committee instead of giving due importance to the said pre-constitutional document has given more weightage to the document of the year 1926 where the caste of her great grandfather is reflected as Mani. The submission of Shri.Mendadkar is that the Committee was completely prejudiced by the said document and has failed to consider that the petitioner is in possession of a oldest document reflecting the caste as Mana which is of the year 1924 and this vital document has been overlooked in light of the document of 1926. Shri.Mendadkar placed reliance on the judgment of the Hon'ble Apex Court in the case of Veena Ashok Godse @ Veena Hemant Sonawane V/s. State of Maharashtra in Civil Appeal No.19968 of 2017 in relation to a candidate belonging to 'Wani' community. He advances a submission to the effect that in the said judgment of the Hon'ble Apex Court, document furnished in respect of great grandfather was found to be of the year 1922 and was sought to be relied upon but the High Court failed to take into consideration the said document, the Hon'ble Apex Court was pleased to set aside the order passed by the High Court. Shri.Mendadkar would also rely on the detailed reply submitted by the petitioner in response to the Vigilance Cell Inquiry and he would harp on the adverse attitude of the Committee in not examining the claim of the candidates in light of the position of law which is emerging from a catena of judgment delivered by the Hon'ble Apex Court as well as the High Court.

4. With the assistance of the learned Shri.Mendadkar, and the learned AGP Shri.Mali we have perused the petition along with its annexures. Since we had before us the original record of the respondent No.-2-Committee in relation of the claim of the petitioner, we have perused the said record.

Perusal of the impugned order would reveal that the applicant claim to be belonging to Mana, Scheduled Tribe and the place of origin is described as Yawatmal. In support of the claim the petitioner has placed reliance on certain documents which include the Caste certificate of her grandfather (Ramchandra Domaji Gajbe) dated 17.07.1967, school leaving certificate of applicants father (Pramod Ramchndra Gajbe) dated 07.07.1984 as well as the first page of service book of her father. In order to ascertain the claim, the applicants case was handed over to Vigilance Cell of Amravati Committee. The Vigilance Cell recorded the statement of the applicant's father who also furnished a copy of the genealogical tree. The Vigilance Cell was able to lay its hand on certain pre-constitutional document in the form of birth-death record pertaining to the applicants ancestors.

As far as school record of the applicant's paternal side relatives, the following caste entries were found to be recorded:-

Sr. No

Reg.No./ Book No.

Name of pupil

Caste/ sub caste

Date of admission and Std

Relation with the applicant

1

622

Pramod Ramchandra Gajabe

Mana

22/12/1976 & 1st

Father

2

Illegible

Illegible (Father nameRamchandra Gajabhe

Mana

7/7/1984 8th

-

3

2001

Ramchandra Domaji Gajabe

Mani

21/6/1948 4 th

Grandfather

4

417

Suresh Maruti Gajbe

Mana

7/7/1962 1st

Cousin uncle

5

62A/3

Maya Marotrao Gajabe

Man

8/9/1969 4th

Cousin aunt

6

782

Jyoti Marotaro Gajabe

Mana

3/7/1970 1st

Cousin Aunt

The Vigilance Cell was also able to trace the following entries in the birth-death record of the paternal side relatives of the petitioner. The details of which are enumerated below :-

No.

Date

Age

Male or Female

Name

Father, grandfather name & Caste

Relation with the applicant

1

10/3/1924

--

X

1

--

Doma Mana

Great grandfather

2

14/4/1926

--

X

1

--

Doma Mani

Great grandfather

3

2/6/1967

--

X

1

Narmada

Maroti Domaji

Cousin aunt

5. The Research Officer attached to the Vigilance Cell of Amravati Committee, on

perusal of the said entries remarked that the caste entries are found to be Mana, Mani, Manee. The Vigilance Cell also applied its methodology to ascertain whether the characteristics, traits, customs etc., match with that of Mana, Scheduled Tribe and it recorded a finding in the negative. The Committee has forwarded the copy of the Vigilance Cell Inquiry to the petitioner in order to comply with the principles of natural justice and the applicant submitted a detailed explanation on 24.10.2016 to the Vigilance Cell report. The petitioner was called for personal hearing on 18.08.2017, which she attended along with her father. Certain questions were posed to him and based on the entire inquiry, the committee proceeded to pass the impugned order.

6. Perusal of the impugned order discloses that the Vigilance Cell was able to procure the extracts of birth/death record in respect of the applicants paternal side relatives which reflects the caste as Mana and Mani of the period 1924 and 1926 respectively. The committee therefore makes the following observation:-

"In addition to above, the enquiry officer has obtained birth/death record in respect of applicant's paternal side relatives (and more specifically, of her great grandfather) showing caste entry as Mana and Mani of the period 1924 and 1926 respectively. Thus, we find two caste entries of applicant's relatives as Mani, of the pre- Presidential order period, possessing a greatest probative value of evidence."

Further the Committee was pleased to observe that in Vidharbha Region there exists a caste known as Mana which is non-tribal Caste and they are trying to grab the benefits of reservation meant for Scheduled Tribe by taking benefit of the similarity of nomenclature. They are basically sub-caste/class of Kunbi and not a Scheduled Tribe. The committee placed reliance on the observations of the Division Bench of this Court in Writ Petition No.878 of 2009 in case of Sandeep Deorao Jivtode where the claim put forth was of Mana, Scheduled Tribe. It relies on the following observations of the Division Bench:-

"It is therefore, evident that there is inherent discrepancy in the caste mentioned in respect of documents pertaining to close relative of petitioner and therefore the conclusion arrived at by the Caste Scrutiny Committee, in such a situation, needs no interference. Hence, the petition is dismissed."

7. Further on account of the place of residence also the Committee has non-suited the petitioner. The Committee has observed that the original place of residence as mentioned by the father of the applicant before the Committee is at post Taluka, District-Yavatmal whereas in the application form i.e. form-E at Serial No.9(c), it is mentioned as Lohara, District-Yavatmal where as the information regarding original place of residence as furnished to the Vigilance Cell of Amravati Division and brought by them on record is at Village-Madni, Taluka-Babhulgaon, District-Yavatmal.

Discrepancy was also found in the information furnished by the father of the applicant as regards the deities worshiped by their community and also

traditional occupation. On the basis of the said information the Committee has concluded that the applicant/her father has furnished different information on different occasions thereby misleading the Committee. It also observed that the information submitted by the applicant and also brought by the Vigilance Cell, regarding cultural affinity does not match with the genuine Mana, Scheduled Tribe and therefore, the applicant has failed to satisfy the Crucial Cultural Affinity Test. The Committee also refers to the factum that before removal of area restrictions in the year 1976, Gond including other Tribes (Arakh, Mana etc.) was restricted to the areas of Melghat Tahasil of Amravati District, Gadchroli and Sironcha Tahasil of Chanda District and Kelapur, Wani and Yeotmal Tahasil of Yeotmal District. The permanent place of the applicant being village Madni, Taluka-Babhulgaon, District- Yavatmal did not find place in the restricted area for Mana, Scheduled Tribe and this is an additional ground on which the Committee do not find favour with the claim of the petitioner. Resultantly, in the backdrop of the aforesaid observations, the Committee concludes that the applicant has failed to substantiate her claim applying any parameters and hence the claim was liable to be rejected.

8. It is this order of rejection of the Caste claim which is assailed before us in the present Writ Petition. Shri.Mendadkar, learned counsel appearing for the petitioner submit that the Scrutiny Committee has committed gross error in relying upon stray entries of Mani/Manee. He would submit that the oldest entry in favour of her great grandfather dated 10.03.1924 records the Caste as Mana. The Committee has completely ignored the said entry, by placing reliance on subsequent entry on 14.04.1926 where the case of the same person i.e. her great grandfather has been recorded as Mani. Shri.Mendadkar, also finds flaw with the Vigilance Cell report and submit that the said report do not dispute that on verification of the birth-death entries in the Kotwal Book in the Tahsil Office at Babhulgaon, the entry dated 10.03.1924 in favour of Shri.Domaji i.e. great grandfather of the petitioner the caste is recorded as Manna. However, the Vigilance Cell refers to the applicants cousin, grandfather Maroti Domaji and one daughter Narmada Maroti Domaji who was born on 1967 where the caste is not mentioned, however, in the same register, there is an entry of death of said Narmada Maroti Domaji recorded in July 1967 where her caste is recorded as Mani. Further a reference is also made to the school record of applicants grandfather Ramchandra Domaji Gajabe who was admitted in the school in 1948 and the caste is recorded as Mani. This report is objected to by Shri.Mendadkar and his submission is that all these entries where the caste column are left blank should not be given any weightage. He emphasis is on the entry of the great grandfather which is in form of extract of Dakhal Kharij Register and the entries are recorded in 1923 where the caste is clearly recorded as Mana and according to him this entry which is oldest one, ought to have been given due importance and weightage. As regards affinity test is concerned, Shri.Mendadkar's submission is that the Vigilance Officer on one hand has recorded a finding that the document in respect of the blood relatives records the caste as Mani but the

record of great grandfather records the caste Mana and then the Vigilance Officer had arrived at a conclusion that the Customs and Traditions as mentioned by the applicant do not have any resemblance with that of Scheduled Tribe. Shri.Mendadkar submit that the finding recorded by the Vigilance Officer is without any basis and if the questionnaire is perused, the applicant has answered all the questions put forth to her and established her affinity to Mana, Scheduled Tribe. Shri.Mendadkar also place heavy reliance on the judgment of the Hon'ble Apex Court in the case of Mana Adim Jamat Mandal V/s. State of Maharashtra and others, reported in 2003(3) Mh.L.J. 513, where it is held that Mana is separate community and need not establish its affinity with other Tribes which are placed in the said entry. He also places reliance on the judgment delivered by the very same Bench (Shri.S.C. Dharamadhikari and Smt.Bharati Dangre, JJ.) in case of Motial So. Namdeo Pawar V/s. Scheduled Tribe Certificate Scrutiny Committee (Writ Petition No.07 of 2014) on 22.12.2017 and in light of the said judgment he submits that the impugned order is liable to be quashed and set aside.

9. Perusal of the records reveals that the applicant in order to establish her claim has relied on certain documents where the caste is recorded as Mana. This includes her own certificate as well as certain documents in favour of her father and grandfather. She has placed reliance on the Caste certificate issued to the applicant's grandfather-Ramchandra Domaji Gajabe issued on 17. 07.1967 where the caste is recorded as Mana. She also placed reliance on the school leaving certificate of her father issued by the Headmaster, Zilla Parishad, High School and Junior College, Yavatmal where the caste is clearly recorded as Mana on 7. 07.1984. After carrying out the enquiry, the Vigilance Cell has submitted its report and has obtained information about the ancestors of the petitioner. Findings recorded in the Vigilance Cell report at that entry in respect of the grandfather of the petitioner namely Ramchandra Domaji Gajabe contained in the Dakhal Kharij Register dated 21.06.1948 records the caste as Mani. Further, an entry of Ramchandra Domaji, who happens to be a great grandfather of the petitioner as contained in the Kotwal Book bearing appearing a date of 10.03.1924 records the caste as Mana but another entry of the same person namely Domaji which came to be recorded on 14.04.1926 record the Caste as Mani. Further, reliance is also placed entry of cousin aunt Narmada Maroti Domaji, where in the death register entry of Mani is disclosed. The Vigilance Cell, in the backdrop of the aforesaid entries record a finding that on perusal of the birth-death register of the great grandfather of the petitioner Domaji, two entries are recorded one dated 10.03.1924 and another dated 14.4.1926 and the Caste recorded in these two documents is Mana and Manee respectively. The Vigilance Cell makes a reference to other entries where the Caste is recorded as Mana. Then the Vigilance Cell also applied the affinity test to the case of the petitioner and recorded a finding that taking into consideration the original place of residence, the deities, festivals, dance forms etc., the version of the petitioner do not support the case that she belongs to Mana, Scheduled Tribe. Based on the said Vigilance Report,

the Committee records a finding that in light of the entry of Domaji recorded in the year 1926 as Mani, the reliance placed by the petitioner on the earlier document of 1924 cannot be taken as gospel truth and existence of Mani entry in respect of the great grandfather makes the case of the applicant dubious. The Committee has recorded that in Vidharbh Region there exists a Mana caste which is non-tribal and there is a vast distinction between this Mana caste and Mana which is recognized as Scheduled Tribe. This Mana caste is a sub-caste/caste of Kunbi, type of non-agricultural class and do not bear any affinity with Mana Scheduled Tribe. In this backdrop the committee concludes that the applicant had failed to establish her tribe claim by way of documentary evidence.

We do not find any perversity or illegality in the said finding recorded by the Committee. It is no doubt true that the claim of a candidate has to be scrutinized in light of the documentary evidence produced by him and such evidence tendered should inspire confidence existence of two different caste entries of the great grandfather of the petitioner, both of them of pre- constitutional period creates a doubt on its probative value. If the claim is not fully satisfied on the basis of the documentary evidence and it gives way to any doubt in that contingency the committee was perfectly justified in referring to other ancillary factors as to the original place of the residence as also the application of affinity test. On this count the committee has noted that the applicant has given misleading information and the finding recorded by the Committee in paragraph No.8 of its order is borne from record. We have no reason disagree with the said findings since it is based on the factual aspect of the matter. As far as affinity test is concerned, since the petitioner claims to be belonging to tribe which is recognized as Scheduled Tribe, the affinity test assumes great significance and by applying the affinity test the claim of the petitioner as belonging to the said tribe can be ascertained since every tribe has its distinctive cultural, anthropological and ethnological traits which are reflected in their way of life and are passed from one generation to another and in order to find out whether the person belongs to the said tribe, the affinity test can very well be relied on. On applying the said test the Vigilance Cell has recorded that the claim of the petitioner as belonging to Mana, Scheduled Tribe cannot be established.

10. Mr.Mendadkar placed heavy reliance on the judgment of the Mana Adim Jamat Mandal (Supra) is of no succor to him since the said judgment is based on completely different situation and was in respect of the entry number 18 of the Scheduled Caste and Scheduled Tribe Orders (Amendment) Act of 1976. The issue involved in the said judgment was pertaining to the affinity to be shown by a tribe which finds place as Entry No.18 with Gond and in the backdrop of the said controversy the Hon'ble Apex Court has held that it is not imperative to establish such an affinity since Mana itself was a separate community with no affinity whatsoever with Gond Tribe and just because it finds place in Entry No.18, it is not necessary for it to establish its affinity with Gond and in this backdrop the Hon'ble Apex Court has upheld the finding recorded by the Division Bench of this Court that Mana Community which has been listed at Entry No.18

in the Scheduled Tribe Order as it in the stands, it is not open to the State Government or the Court to embark upon an enquiry to determine whether a section of Mana was excluded from the benefit of the Scheduled Tribe order. The judgment of the Apex Court in case of State of Maharashtra & Others V/s. Mana Adim Jamat Mandal reported in (2006) 4 SCC 98 conclude that 'Mana' is a separate Tribe by itself and it is not a sub-tribe of the 'Gond'. The said judgment do not assist the petitioner in as much as she has not discharged the burden cast on her to prove that she belongs to 'Mana' which finds place at Entry No.18 and which is recognized as Scheduled Tribe. It is then incumbent upon the petitioner to establish her claim through documentary evidence and the Committee is empowered to apply the affinity test, in assessing the claim so made. It is no doubt true that while applying the affinity test which has its emphasis on the ethnological and anthropological moorings with the Scheduled Tribe a cautious approach needs to be adopted and the affinity test may not be a conclusive determinative factor in light of the migrations, modernization etc. However, affinity test is recognised as a test to be invoked to corroborate the documentary evidence though it is not to be relied as a conclusive one, to reject a claim.

11. Applying the said parameters when we examined the case of petitioner we can conclude that the petitioner has failed to establish her claim on the basis of the documentary evidence and on finding entries of Mani in the record of her great grandfather, Domaji and Grandfather Ramchandra Domaji Gajabe where the caste column records caste Mani, we do not find any fault with the findings recorded by the Committee to the effect that the petitioner has failed to establish her claim as belonging to Scheduled Tribe. The Committee has also recorded a finding that the Mana, tribe was found in certain Districts and was restricted to these Districts. The Committee has made a reference to the full bench judgment of this Court in the case of Yogita Anil Sonawane V/s. The State of Maharashtra & Ors. (Writ Petition No.1603 of 2010) which had taken into consideration the Act No.108 of 1976 which removed area restriction and though the place of residence have been declared not to be exclusive factor for claiming of a particular tribe it is expected to establish that he or his predecessor have migrated from the earlier prescribed area. In light of the aforesaid judgment we do not find that the Committee has erred on this aspect also since the petitioner has not been able to establish by way of evidence that her grandfather or great grandfather was resident of Kelapur, Wani and Yeotmal Tahsil of Yeotmal District where as the petitioner and her ancestors are found to be residing at Village Madni, Taluka Yeotmal which do not find place in the list of areas where Mana, Scheduled Tribe, was traced before removal of area restriction. In conclusion, in absence of any perversity or any illegality in the order of the Scrutiny Committee, we are unable to accede to the arguments advanced by Shri.Mendadkar that the said order needs to be quashed and set aside.

12. The petitioner is a student and was granted admission in the first year MBBS Course during the academic year 2016-2017 and at present she is Second year student of MBBS. Shri.Mendadkar, made a sincere attempt to canvass before us

that disturbing the petitioner at this stage would be highly detrimental to her interest and her entire career would be put at stake.

We can very well appreciate the loss which would be caused to the petitioner if she is deprived of her education in the field of medicine which she is pursuing. The State of Maharashtra has enacted The Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000, and it has come into force from 23rd May 2001. Even prior to this enactment the State Government through various resolutions had mechanism in place where the Scrutiny Committee had been set up for verification of caste and tribe claims and the committee has now received statutory recognition. In light of the said enactment, the person desirous of seeking a public employment or admission in any Educational Institution or contesting a elective post to a local authority is entitled to apply to the Competent Authority for issuance of the caste certificate which is subject to verification by the said committee. Section 7 of the said Act provides for confiscation and cancellation of false certificate and it reads thus :-

Section 7- Confiscation and cancellation of false Caste Certificate. -

(1) Where, before or after the commencement of this Act, a person not belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified tribe (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category has obtained a false Caste Certificate to the effect that either himself or his children belong to such Castes, Tribes or Classes, the Scrutiny Committee may, suo motu, or otherwise call for the record and enquire into the correctness of such certificate and if it is of the opinion that certificate was obtained fraudulently, it shall, by an order cancel and confiscate the certificate by following such procedure as prescribed, after giving the person concerned an opportunity of being heard, and communicate the same to the concerned person and the concerned authority, if any.

(2) The order passed by the Scrutiny Committee under this Act shall be final and shall not be challenged before any authority or court except the High Court under Article 226 of the Constitution of India.

13. Section 8 cast a burden on the person claiming to be belonging to particular caste/tribe to prove his claim, both before the Competent Authority to whom it applies for caste certificate and also before the Committee scrutinizing the claim. Section 10 of the enactment contains a important provision for withdrawing all the benefits secured on the basis of the false caste certificate. The said Section reads thus :-

Section-10-Benefits secured on the basis of false Caste Certificate to be withdrawn. -

(1) Whoever not being a person belonging to any of the Scheduled Castes,

Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes of Special Backward Category secures admission in any educational institution against a seat reserved for such Castes, Tribes or Classes, or secures any appointment in the Government, local authority or in any other company or corporation, owned or controlled by the Government or in any Government aided institution or co-operative society against a post reserved for such Castes, Tribes or Classes by producing a false Caste Certificate shall, on cancellation of the Caste Certificate by the Scrutiny Committee, be liable to be debarred from the concerned educational institution, or as the case may be, discharged from the said employment forthwith and any other benefits enjoyed or derived by virtue of such admission or appointment by such person as aforesaid shall be withdrawn forthwith.

(2) Any amount paid to such person by the Government or any other agency by way of scholarship, grant, allowance or other financial benefit shall be recovered from such person as an arrears of land revenue.

(3) Notwithstanding anything contained in any Act for the time being in force, any Degree, Diploma or any other educational qualification acquired by such person after securing admission in any educational institution on the basis of a Caste Certificate which is subsequently proved to be false shall also stand cancelled, on cancellation of such Caste Certificate by the Scrutiny Committee.

14. The criminal offence and a penalty provision is contained in Section 11 of the said Act which reads thus :-

Section-11-Offences and penalties.

(1) Whoever,-

(a) obtains a false Caste Certificate by furnishing false information or filing false statement or documents or by any other fraudulent means; or

(b) not being a person belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category secures any benefits or appointments exclusively reserved for such Castes, Tribes, or Classes in the Government, local authority or any other company or corporation owned or controlled by the Government or in any Government aided institution, or secures admission in any educational institution against a seat exclusively reserved for such Castes, Tribes or Classes or is elected to any of the elective offices of any local authority or co-operative society against the office, reserved for such Castes, Tribes or Classes by producing a false Caste Certificate; shall, on conviction, be punished, with rigorous imprisonment for a term which shall not be less than six months but which may extend upto two years or with fine which shall not be less than two thousand rupees, but which may extend upto twenty thousand rupees or both.

(2) No court shall take cognizance of an offence punishable under this section except upon a complaint, in writing, made by the Scrutiny Committee or by any

other officer duly authorised by the Scrutiny Committee for this purpose.

15. In light of the statutory scheme in place, we cannot in any way assist the petitioner. The position that emerges from the provisions referred above is that a person who is not entitled to claim the benefit and relies on the false claim, must face the consequences on its invalidation, howsoever disastrous the consequences may be.

In Kumari Madhuri Patil and Another V/s. Additional Commissioner, Tribal Development and Others, the Hon'ble Supreme Court issued directions for Constitution of Scrutiny Committee to verify the caste and tribe claim of claimants who stake their claims. In paragraph No.13 of the said judgment the Hon'ble Apex Court made the observation to the following effect:-

"A admission wrongly gained or admissions wrongly obtained on the basis of the false status certificate necessarily has the effect of the depriving the genuine Schedule Caste and Schedule Tribe Casts or Schedule Tribe or Other Backward Class candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied the admission to educational institution for admission of the office or post under State for want of social status certificate. The in eligible or spurious persons who falsely gained into resort to declaratory tactics and create hurdles in completion of the enquiries by the Scrutiny Committee. It is therefore, necessary that the certificates issued are scrutinized at the earliest and with utmost expeditious and promptitude."

16. Based on the aforesaid decisions several statutes came to be enacted and the Act No.23 of 2001 enacted by State of Maharashtra is one such piece of legislation. It provides for Constitution of Vigilance Cell for investigation into caste and tribe claim. The Committee is empowered to evaluate the evidence placed before it and it is expected to consider all the material facts and then record a finding. The Enactment itself contains stringent provisions to deal with the contingency when a certificate produced by a candidate is invalidated by the Verification Committee and it is cancelled on the ground that the same is based on a false claim or declaration made by a person claiming to belong to a reserved category before a disqualification results. The legislature intended that a person who do not belong to the caste/tribe claimed by him must be ripped of all the benefits flowing from such a claim on its invalidation. The Hon'ble Apex Court in case of R. Vishwanatha Pillai V/s. State of Kerala and Others reported in (2004) 2 SCC 105 observed thus :-

"13. The rights to salary, pension and other service benefits are entirely statutory in nature in pubic service. The appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eye of the law. The to salary or pension after retirement flows from a valid and legal appointment. The consequential rights of pension and other monetary benefits

can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on a false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for a Scheduled Caste, thus depriving a genuine Scheduled Caste candidate or appointment to that post, does not deserve any sympathy or indulgence of this Court. A person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practicing fraud."

17. The Hon'ble Apex Court in case of Chairman and Managing Director FCI and Others V/s. Jagdish Balaram Bahira made the following observations in dealing with a false claim:-

"66. One of the considerations which is placed in store before the court particularly when an admission to an educational institution is sought to be cancelled upon the invalidation of a caste or tribe claim is that the student has substantially progressed in the course of studies and a cancellation of admission would result in prejudice not only to the student but to the system as well. When the student has completed the degree or diploma, a submission against its withdrawal is urged a fortiori. In our view, the state legislature has made a statutory decision amongst competing claims, based on a public policy perspective which the court must respect. The argument that there is a loss of productive societal resources when an educational qualification is withdrawn or a student is compelled to leave the course of studies (when he or she is found not to belong to the caste or tribe on the basis of which admission to a reserved seat was obtained) cannot possibly outweigh or nullify the legislative mandate contained in Section 10 of the state legislation. When a candidate is found to have put forth a false claim of belonging to a designated caste, tribe or class for PART A whom a benefit is reserved, it would be a negation of the rule of law to exercise the jurisdiction under Article 142 to protect that individual. Societal good lies in ensuring probity. That is the only manner in which the sanctity of the system can be preserved. The legal system cannot be seen as an avenue to support those who make untrue claims to belong to a caste or tribe or socially and educationally backward class. These benefits are provided only to designated castes, tribes or classes in accordance with the constitutional scheme and cannot be usurped by those who do not belong to them. The credibility not merely of the legal system but also of the judicial process will be eroded if such claims are protected in exercise of the constitutional power conferred by Article 142 despite the state law.

68. Medical education is what middle-class parents across the length and breadth of the country aspire for their children (whether this will continue to be so PART A in future is a moot question). There is intense competition for a limited number of under-graduate, post-graduate and super-speciality seats. This can furnish no justification for recourse to unfair means including adopting a false claim to belong to the reserved category. The fault - lines of our system, be it in education, health or law, are that its lethargy and indolence furnish incentives for the few who choose to break the rules to gain an unfair advantage. In such a situation, the court as a vital institution of democratic governance must be firm in sending out a principled message that there is no incentive other than for behaviour compliant with rules and deviance will meet severe reprimands of the law. "

18. In light of the aforesaid authoritative pronouncements once we upheld the finding of the Committee that the petitioner was not able to substantiate her claim of belonging to Mana, Scheduled Tribe, the petitioner must suffer the consequences although, it results in aborting her medical education. However, in our view the petitioner do not deserve any sympathy in the wake of legislative provision, on rejection of her claim and she do not deserve any sympathy or indulgence at our end. No equitable consideration can come to her rescue. We are of the firm view that equity or compassion cannot be allowed to bend the mandate of a legislation.

19. In light of the aforesaid observations we are upheld the order passed by the Scrutiny Committee and dismiss the Writ Petition with no order as to costs.