

PRIYA PRAMOD GAJBE

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v.

THE STATE OF MAHARASHTRA AND OTHERS

(Civil Appeal No. 7117 of 2019)

JULY 11, 2023

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[B. R. GAVAI AND J. B. PARDIWALA, JJ.]

*Education/Educational Institutions – MBBS admission – Seat reserved for Scheduled Tribe – Appellant secured the admission claiming that she belonged to ‘Mana’ Scheduled Tribe – Claim invalidated – Documents of pre-Constitution period relied upon by the appellant – Probative value of – Held: Documents of the pre-Constitution period showing the caste of the applicant and their ancestors have got the highest probative value – If an applicant is able to produce authentic and genuine documents of the pre-Constitution period showing that he belongs to a tribal community, there is no reason to discard his or her claim as prior to 1950, there were no reservations provided to the Tribes included in the Constitution (Scheduled Tribes) Order – In the present case, appellant’s great grandfathers birth record shows the caste as ‘Mana’ – The said document relates to as early as 10.03.1924, while another document of 14.04.1926 shows the caste as ‘Mani’, however, there is no caste named ‘Mani’ – It is possible that there could be some mistake in writing the caste as the original record was written in Marathi and not in English – No reason to discard the pre-Constitutional document of the period as early as 1924 – Order of the Scrutiny Committee and High Court quashed and set aside – Appellant belongs to ‘Mana’ Scheduled Tribe – Social Status Certificate.*

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*Social Status Certificate – Scheduled Tribe – Affinity Test – Held: Affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe – Claim by a person belonging to the Scheduled Tribe cannot per se be disregarded on the ground that his present traits do not match his tribe’s peculiar anthropological and ethnological traits etc. – Though the Affinity Test may be used to corroborate the documentary*

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The appellant claimed that she belongs to 'Mana' Scheduled Tribe. As such, her case was referred to the Scrutiny Committee. The Scrutiny Committee by order dated 12<sup>th</sup> December 2017 invalidated the claim of the appellant on the following grounds:-

- i. The appellant failed to satisfy the Affinity Test conducted during the vigilance inquiry. B
- ii. The appellant failed to prove that she originally belongs to an area where the people of Mana Scheduled Tribe reside.

4. We have heard Shri Sudhanshu Choudhari, learned counsel appearing for the appellant, Shri Shrirang B. Varma, learned counsel appearing for the State of Maharashtra and Shri Kunal Cheema, learned counsel appearing for the intervenor. C

5. Shri Choudhari, learned counsel for the appellant, relying on the recent judgment rendered by a three Judges Bench of this Court in the case of *Mah. Adiwasi Thakur Jamat Swarakshan Samiti v. State of Maharashtra and Others*<sup>1</sup>, submits that once the pre-Constitutional documents established that the appellant belongs to 'Mana' Scheduled Tribe, further reference to the Vigilance Cell itself was not necessary. He further submits that the Affinity Test cannot be applied as a litmus test. D

6. Shri Varma, learned counsel appearing for the State of Maharashtra, on the contrary, submits that the Scrutiny Committee as well as the High Court have rightly concluded that the appellant has failed to establish that she belongs to 'Mana' Tribe. He submits that some of the documents show that the appellant's forefathers entries are 'Mani'. He, therefore, submits that in view of the conflicting documents, it was necessary for the appellant to clear the Affinity Test. Relying on a Full Bench judgment of the High Court of Bombay in the case of *Ku. Yogita v. State of Maharashtra and Others*<sup>2</sup>, he submits that though area restrictions have been removed in 1976, it will still be necessary for a candidate to establish that the candidate's family originally belongs to an area for which a particular tribe was notified as a Scheduled Tribe. E F G

7. Shri Cheema, learned counsel appearing for the intervenor(s), supports the arguments advanced by Shri Varma, learned counsel for the State of Maharashtra.

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<sup>1</sup> 2023 SCC Online SC 326

<sup>2</sup> Writ Petition No.6103 of 2010 decided on 15.09.2016

A 8. This Court, in the case of *Mah. Adiwasi Thakur Jamat Swarakshan Samiti* (supra), has observed as under:-

B “20. It is not possible to exhaustively lay down in which cases the  
C Scrutiny Committee must refer the case to Vigilance Cell. One of  
the tests is as laid down in the case of Kumari Madhuri Patil,  
(1994) 6 SCC 241. It laws down that the documents of the pre-  
Constitution period showing the cast of the applicant and their  
ancestors have got the highest probative value. For example, if an  
applicant is able to produce authentic and genuine documents of  
the per-Constitution period showing that he belongs to a tribal  
community, there is no reason to discard his claim as prior to  
1950, there were no reservations provided to the Tribes included  
in the ST order. In such a case, a reference to Vigilance Cell is  
not warranted at all.”

D 9. It could thus be seen that this Court has held that documents of  
the pre-Constitution period showing the caste of the applicant and their  
ancestors have got the highest probative value. It has also been held that  
if an applicant is able to produce authentic and genuine documents of  
the per-Constitution period showing that he belongs to a tribal community,  
there is no reason to discard his or her claim as prior to 1950, there were  
no reservations provided to the Tribes included in the Constitution  
E (Scheduled Tribes) Order.

F 10. A perusal of the report of the Vigilance Committee itself would  
reveal that the appellant’s great grandfathers birth record show the caste  
as ‘Mana’. The said document relates to as early as 10<sup>th</sup> March 1924,  
while another document of 14<sup>th</sup> April 1926 shows as ‘Mani’. However,  
it is pertinent to note, and learned counsel for the parties also agree, that  
there is no caste named ‘Mani’. It is thus possible that there could be  
some mistake in writing when the caste was written. It is to be noted  
that original record is written in Marathi and not in English. As such,  
such an error is quite possible.

G 11. We, therefore, find that there was no reason to discard the  
pre-Constitutional document of the period as early as 1924.

12. Insofar as Affinity Test is concerned, this Court, in the case of  
*Anand v. Committee for Scrutiny and Verification of Tribe Claims  
and Others*<sup>3</sup>, has observed thus:

H <sup>3</sup>(2012) 1 SCC 113

“22. It is manifest from the aforeextracted paragraph that the genuineness of a caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but also on the affinity test, which would include the anthropological and ethnological traits, etc., of the applicant. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. Nevertheless, we feel that the following broad parameters could be kept in view while dealing with a caste claim:

(i) While dealing with documentary evidence, greater reliance may be placed on pre-Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-Independence documents. In case the applicant is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact, the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant;

(ii) While applying the affinity test, which focuses on the ethnological connections with the Scheduled Tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, the affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a Scheduled Tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribe’s peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies, etc. Thus, the affinity test may be used to corroborate the

A documentary evidence and should not be the sole criteria to reject a claim.”

13. This court has held that while applying the Affinity Test which focuses on the ethnological connections with the Scheduled Tribe, a cautious approach has to be adopted. It has been held that a few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, the affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. It has been held that the claim by a person belonging to the Scheduled Tribe cannot *per se* be disregarded on the ground that his present traits do not match his tribe’s peculiar anthropological and ethnological traits etc. It has been held that though the Affinity Test may be used to corroborate the documentary evidence, it should not be the sole criteria to reject the claim.

14. It will further be apposite to refer to the recent judgment of this Court in the case of ***Mah. Adiwasi Thakur Jamat Swarakshan Samiti*** (supra), wherein this Court observed thus:-

E “25. Now, we come to the controversy regarding the affinity test. In clause (5) of Paragraph 13 of the decision in the case of Kumari Madhuri Patil, (1994) 6 SCC 241, it is held that in the case of Scheduled Tribes, the Vigilance Cell will submit a report as regards peculiar anthropological and ethnological traits, deities, rituals, customs, mode of marriage, death ceremonies, methods of burial of dead bodies etc. in respect of the particular caste or tribe. Such particulars ascertained by the Vigilance Cell in respect of a particular Scheduled Tribe are very relevant for the conduct of the affinity test. The Vigilance Cell, while conducting an affinity test, verifies the knowledge of the applicant about deities of the community, customs, rituals, mode of marriage, death ceremonies etc. in respect of that particular Scheduled Tribe. By its very nature, such an affinity test can never be conclusive. If the applicant has stayed in bigger urban areas along with his family for decades or if his family has stayed in such urban areas for decades, the applicant may not have knowledge of the aforesaid facts. It is true that the Vigilance Cell can also question the parents of the

applicant. But in a given case, even the parents may be unaware A  
for the reason that for several years they have been staying in  
bigger urban areas. On the other hand, a person may not belong  
to the particular tribe, but he may have a good knowledge about  
the aforesaid aspects. Therefore, Shri Shekhar Naphade, the  
learned senior counsel, is right when he submitted that the affinity B  
test cannot be applied as a litmus test. We may again note here  
that question of conduct of the affinity test arises only in those  
cases where the Scrutiny Committee is not satisfied with the  
material produced by the applicant.”

15. It could thus clearly be seen that this Court has held that if the C  
appellant has stayed in bigger urban areas along with his family for decades  
or if his family has stayed in such urban areas for decades, the applicant  
may not have knowledge of the aforesaid facts. This Court has, therefore,  
held that the Affinity Test cannot be applied as a litmus test.

16. Insofar as the contention with regard to area restriction is D  
concerned, it could be seen that Mana Tribe is found at Entry No.18 in  
the Presidential Order with respect to the Scheduled Castes and  
Scheduled Tribes for the State of Maharashtra. It could be seen that in  
the said entries, there is no area restriction with regard to any of the  
tribes mentioned therein. Per contra, in some of the entries, restriction is  
imposed with regard to certain districts. As such, the findings of the E  
High Court with regard to area restrictions also, in our view, is not  
sustainable in law. We find that the order of the Scrutiny Committee as  
well as of the High Court need to be interfered with and quashed and set  
aside on this short ground alone.

17. In the result, the appeal is allowed. The order dated 12<sup>th</sup> F  
December 2017 passed by the Scrutiny Committee and the order dated  
22<sup>nd</sup> December 2018 passed by the High Court of Bombay are quashed  
and set aside. It is held and declared that the appellant belongs to ‘Mana’  
Scheduled Tribe.

18. Needless to state that the validity certificate shall be issued by G  
the Committee within a period of one month from today.

Pending application(s), if any, shall stand disposed of.