GAHC040008352024 undefined

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : IA(C)/192/2026

Hayeng Mangfi
Age: 49 Occupation :
Address:Son of Late Tangu Mangfi
resident of Nari Camp Village
PO Sawa
PS Chayang Tajo
East Kameng District
Arunachal Pradesh.

VERSUS

Kompu Dolo
Age: 62 Occupation :
Address:Son of Late Tagung Rebe
resident of Village Rebe
PO Chayang Tajo
East Kameng District
Arunachal Pradesh.

Advocate for : Mudang Opo
Advocate for : Takar Bagang appearing for Kompu Dolo: Advocate appearing for respectively.

Linked Case : **Election Pet./1/2024**

Kompu Dolo Son of Late Tagung Rebe, resident of Village Rebe, PO and PS Chayang Tajo, East Kameng District, Arunachal Pradesh 790102

VERSUS

Hayeng Mangfi Son of Late Tangu Mangfi, resident of Nari Camp Village, PO Sawa, PS Chayang Tajo, East Kameng District, Arunachal Pradesh 790102

:::BEFORE:::

HON'BLE MR. JUSTICE BUDI HABUNG

Advocates for the applicant : Mr. S. K. Deori
Mr. M. Opo

Advocates for the Opposite Party: Mr. S. Dutta, Sr. Adv.
Mr. R. Shekhar

1. Date on which judgment is reserved: 09.09.2026
2. Date of pronouncement of judgment: 28.09.2026
3. Whether the pronouncement is of the operative part of the judgment? NA
4. Whether the full judgment has been pronounced? YES

JUDGMENT & ORDER(CAV)

Heard Mr. Sandi K. Deori, learned counsel assisted by Mr. Mudang Opo, learned counsel for the applicant/returned candidate. Also heard Mr. Sishir Dutta, learned senior counsel assisted by Mr. R. Shekhar, learned counsel for the Opposite Party/election petitioner.

2. The applicant/returned candidate has filed the present application under Order XI Rule 14 *read with* Section 151 of the Code of Civil Procedure, 1908, seeking direction for preservation and production of the CCTV footage relating to the scrutiny of nomination papers conducted on 28.03.2024 in the office of the Returning Officer, 9th Chayang Tajo (ST) Assembly Constituency, particularly for the period from 11:00 A.M. to 3:00 P.M.

3. Notice of the application was issued earlier. The Opposite party/Election petitioner has filed his objection/reply.

4. Learned counsel for the Opposite Party/Election Petitioner has opposed the application primarily on the ground that the application is misconceived and not maintainable under Order XI Rule 14 of the Code of Civil Procedure, 1908. It is contended that the District Election Officer, from whom production

of CCTV footage is sought, is not a party to the election petition and therefore no direction can be issued against him under Order XI Rule 14 of Code of Civil Procedure, 1908.

5. It is further submitted that the application does not disclose the source or basis for the assertion that the entire scrutiny proceedings were continuously recorded by CCTV or videography. According to the election petitioner, no particulars have been furnished regarding the number or location of the cameras, the system used for recording, the agency operating the system, the retention period of the recording.

6. Learned senior counsel for the election petitioner further submits that the respondent/returned candidate did not plead in his written statement about the alleged CCTV recording, DVR, data logs or other electronic evidence and did not refer to such material in his list of document/material. It is therefore contended that the present application is an attempt to introduce a new factual foundation and to fill up a lacuna in the defence at the belated stage. It is also submitted that the applicant has not identified which particular pleading in the written statement is sought to be proved by the CCTV footage and that the expression "exact timeline and occurrences" is vague and omnibus. The prayer for the entire CCTV footage from 11:00 A.M. to 3:00 P.M., along with the DVR/storage drive, data logs and master storage, is stated to be excessively broad and amounts to a roving and fishing enquiry.

7. Learned senior counsel further submits that the prayer for a certificate under Section 63 of the Bharatiya Sakshya Adhiniyam, 2023 is premature and that the issue of admissibility and proof of electronic evidence can arise at the appropriate stage. Reliance has been placed upon the decisions reported in (2010) 1 SCC 466 [**Kattinokkula Murali Krishna vs. Veeramalla Koteswara Rao & Ors.**] and (2000) 8 SCC 191 [**Ravinder Singh vs. Janmeja Singh & Ors**.], particularly the observations regarding the necessity of material facts and the

impermissibility of introducing a new case through evidence. Learned senior counsel while referring to the above cases submits that, it is an established proposition that no evidence can be led on a plea not raised in the pleadings and that no evidence can cure defect in the pleadings.

8. Learned senior counsel also submitted that the election petition is required to be tried expeditiously and that the present application would unnecessarily delay the proceedings. The election petitioner therefore seeks dismissal of the application with costs.

9. On the other hand, learned counsel for the applicant/ respondent submits that the application was filed well before completion of the petitioner's evidence and, therefore, the allegation that the application is a belated attempt to fill up a lacuna is factually incorrect. Learned counsel for the applicant submits that the issue in the election petition pertains to the scrutiny and alleged improper acceptance of the nomination paper of the returned candidate. Therefore, he submits that the CCTV footage sought for relates directly to the said scrutiny proceedings. It is submitted that the applicant is not seeking to introduce any new issue in the election petition filed by the election petitioner. It seeks production of the best available contemporaneous record relating to an issue already arising from the election petition.

10. Learned counsel for the applicant has also drawn the attention of this Court to the evidence of PW-6, the Returning Officer. According to the applicant, the PW-6 has stated during his examination at para-112 that the proceedings of scrutiny were recorded under CCTV surveillance. It is submitted that, in view of the said statement of the Returning Officer (PW-6), the existence of the CCTV recording of the scrutiny is not merely a matter concerns only upon the applicant's assertion.

11. Learned counsel for the applicant further submits that the electronic

record/CCTV footage comes under documents. It is in the custody of the election authorities and the same cannot ordinarily be obtained by a private party by way of RTI application. According to the learned counsel, the applicant is therefore seeking a direction of the Court for production of the record. It is also submitted that the relevant electronic record constitutes a document/electronic record and it can be produced before the Court pursuant to the direction of the Court. He further submits that the question of the admissibility of such document/material and proof may be considered at the appropriate stage.

12. I have heard the learned counsel for the parties and the rival submissions have been considered.

13. Under Section 87 of the Representation of the People Act, 1951, every election petition is to be tried by the High Court, subject to the provisions of the Act and the Rules made thereunder, as nearly as may be in accordance with the procedure applicable to the trial of suits under the Code of Civil Procedure. Thus, the procedural powers of the Court under the CPC, insofar as they are consistent with the special provisions governing election petitions, are available for securing relevant evidence/document in connection with the case.

14. Order XI Rule of 14 of the Code of Civil Procedure, 1908, empowers the Court, during the pendency of the proceedings, to direct production of documents relating to any matter in question in the proceedings/suit, however, subject to the requirements of the provision. It is well settled that the power is discretionary and that the Court must consider the relevance, necessity and justness of production of the evidence. At the same time, in an election petition, the Court must not permit a party to embark upon a roving enquiry for discovering a new ground or to fish out material in support of a case which has no foundation in the pleadings.

15. Here the decision of the Hon'ble Supreme Court in **Basanagouda v. Dr. S.B. Amarkhed**, reported in (1992) 2 SCC 612, may be referred, whereby, while considering an application for production of election records under Order XI Rule 14 and Order XVI Rule 6 of the Code of Civil Procedure, 1908, read with Section 87 of the Representation of the People Act, it recognizes that the Court possesses power to summon/order for production of the relevant election records. But cautioned, that the discretion must be exercised having regard to the expediency, justness and relevancy of the documents to the matter in issue. The Supreme Court also cautioned against permitting a roving enquiry to fish out grounds which have no adequate foundation in the pleadings.

16. The principle relating to pleadings relied upon by the election petitioner is undoubtedly well settled. A party cannot, by means of evidence, introduce a new case which has no foundation in its pleadings. However, there is a distinction between introducing a new material fact and producing evidence in support of an existing issue. Every piece of evidence by which a pleaded fact is sought to be established need not necessarily be specifically pleaded in the pleadings. What is impermissible is to introduce altogether a new factual foundation, the evidence which was not already in issue arising for adjudication in the matter.

17. In the present case, the controversy regarding the scrutiny of the nomination paper on 28.03.2024 is admittedly part of the election dispute. The applicant, through the present application, is not seeking, to introduce an entirely independent ground concerning an unrelated occurrence. The CCTV footage is sought to be produce in relation to the very scrutiny proceedings which are already the subject matter of the election petition.

18. The applicant has drawn the attention of the Court to the evidence of PW-6, the Returning Officer, who has stated, during his examination, that the

scrutiny proceedings were recorded under CCTV surveillance. In view of the deposition of PW-6 in this regard, the factual foundation regarding the existence of such recording is not only based merely upon an assertion made by the applicant/respondent for the first time in the interlocutory application. The statement is material for the limited purpose of determining whether production and preservation of the electronic record as prays for ought to be directed. The objection that the applicant did not specifically plead in his written statement that CCTV footage existed cannot, in the circumstances of the present case, by itself defeat the application. The existence or otherwise of the CCTV footage is essentially a matter directly related to the availability of evidence relating to the scrutiny proceedings. The applicant cannot himself be expected to produce an electronic record which is stated to be in the custody of the election authorities.

19. The objection that the District Election Officer is not a party to the election petition also requires consideration. Strictly speaking, Order XI Rule 14 of the Code of Civil Procedure, 1908, contemplates production by a party of documents in his possession or power. Therefore, to the extent the prayer seeks to compel a non-party authority solely under Order XI Rule 14 of the CPC, the provision may not, by itself, furnish the complete procedural basis. However, the Court trying an election petition is not powerless to summon relevant public records from the concerned election authority. The Code of Civil Procedure, 1908, itself contains provisions for production of documents by persons who are not parties, and the Court also possesses necessary incidental powers to secure material evidence relevant to the adjudication of the election petition. In the case of **Basanagouda**(supra), the Supreme Court considered an application seeking production of election documents from the District Election Officer, invoking Order XI Rule 14 read with Order XVI Rule 6 of the Code of Civil Procedure, 1908, and Section 87 of the Representation of the People Act, 1951. Thus, the mere fact that the District Election Officer is

not a party cannot, by itself, be treated as an absolute bar against production of a relevant election record.

20. The present case is also distinguishable from a situation where a party seeks production merely on the basis of conjecture or suspicion. The application was filed before completion of the petitioner's evidence. During the petitioner's evidence, the Returning Officer (PW-6), has apparently stated that the scrutiny proceedings were recorded under CCTV surveillance. These circumstances provide a factual basis for directing preservation and production of the record, if it is in fact available.

21. The objection that the period from 11:00 A.M. to 3:00 P.M. has been selected without any basis also does not, in the fact and circumstances of the case, warrant outright rejection of the application. The period corresponds to the scrutiny proceedings referred to in the application. However, the production shall be confined to the CCTV recording concerning the relevant room/place and the scrutiny proceedings on 28.03.2024 and it shall not become an unrestricted search of unrelated electronic material recorded of the entire day.

22. As regards the prayer for production of the DVR/storage drive, data logs and master storage, this Court is of the view that at this stage it is unnecessary to direct wholesale production of every storage device or every data log. The immediate requirement is to secure the relevant original electronic record and obtain its production before the Court in a manner preserving its integrity. If any dispute subsequently arises regarding the source, completeness or integrity of the footage, the Court may issue further appropriate directions.

23. The prayer seeking a certificate under Section 63 of the Bharatiya Sakshya Adhiniyam, 2023 also does not require rejection of the application.

The question whether the certificate furnished is legally sufficient, and whether the electronic record is ultimately admissible and worthy of reliance, are matters to be considered at the appropriate stage. At this stage, the Court is concerned only with preservation and production of the record.

24. The contention regarding delay in the context of the requirement of expeditious disposal of election petitions has also been considered. However, the present application was not filed after completion of the petitioner's evidence. It was filed earlier and was specifically directed to be taken up after completion of the petitioner's evidence. Therefore, the present consideration of the application cannot fairly be described as an attempt by the applicant to deliberately delay the proceedings. At the same time, the directions herein shall be complied with within a fixed time so that the trial is not unnecessarily prolonged.

25. The Court is, therefore, satisfied that the CCTV recording, if available, is potentially relevant to a matter already arising in the election petition and that the preservation and production of the same would assist the Court in the proper adjudication of the dispute. The production of the record, however, shall not be construed as permitting either party to travel beyond the pleadings or as conferring any right to reopen evidence as a matter of course.

26. Accordingly, the objection filed by the election petitioner is rejected to the extent indicated above, and the application filed by the respondent/applicant under Order XI Rule 14 read with Section 151 of CPC is allowed in part, with the following directions:

(i). The District Election Officer, East Kameng District, Seppa, shall forthwith ascertain, secure and preserve the CCTV/video recording, if available, relating to the proceedings of scrutiny of nomination papers conducted in the office/room/hall of the Returning Officer,

9-Chayang Tajo (ST) Assembly Constituency, on 28.03.2024, particularly for the period from 11:00 a.m. to 3:00 P.M.

(ii). The concerned authority shall produce before this Court the relevant CCTV footage in the original/native electronic format in which it is maintained, or in such other electronic format as preserves the original recording and its integrity, together with a readily viewable copy.

(iii). Along with the electronic record, the concerned authority shall furnish particulars of the CCTV system/camera, DVR/NVR or other storage medium from which the footage has been retrieved, the date/time period covered by the recording, and the manner in which the recording has been retrieved and preserved.

(iv). The concerned authority shall also state whether the recording produced is the original electronic record or a copy thereof and whether the original storage medium containing the relevant recording is still available.

(v). The original DVR/NVR/storage medium, if available and containing the relevant recording, shall be preserved intact and shall not be overwritten, altered or tampered with until further orders of this Court.

(vi). The electronic record may be accompanied by the certificate contemplated under Section 63 of the Bharatiya Sakshya Adhiniyam, 2023, as applicable. The sufficiency of such certificate and the admissibility and evidentiary value of the electronic record are left open for consideration at the appropriate stage.

27. The District Election Officer shall comply with the aforesaid directions and

produce the relevant electronic record before this Court on or before the next date of listing.

28. It is made clear that the parties shall be at liberty to raise all legally permissible objections when the electronic record is sought to be relied upon in evidence.

29. This interlocutory application stands disposed of in the above terms.

JUDGE

Comparing Assistant