

GAHC040008762024



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

Case No. : IA(C)/145/2024

The District Election Officer

Age: 0

Occupation :

Address:represented by Shri Sotailum Bellai

Son of Late Sohing Bellai

presently serving as EAC

DC Office

Tezu

Lohit District

PO and PS Tezu

Lohit District

Arunachal Pradesh

VERSUS

Karikho Kri and 3 Ors

Age: 0

Occupation :

Address:Son of Late Sotri Kri

resident of Kri Niwas

Telluliang Village

PO and PS Tezu

Lohit District

Arunachal Pradesh 792001

2:Dr. Mohesh Chai

Age: 51

Occupation :

Address:Son of Late Tankakso Chai

resident of T Chai residence

Chai Colony

Tezu

PO and PS Tezu

Lohit District

Arunachal Pradesh 792001

3:Badang Tayang

Age: 43

Occupation :

Address:Son of Shri Banumso Tayang
resident of Telluliang Village

Tezu

PO and PS Tezu

Lohit District

Arunachal Pradesh 792001

4:Jeremai Krong

Age: 38

Occupation :

Address:Daughter of Late Turkho Krong
resident of Changliang Village

Tezu

PO and PS Tezu

Lohit District

Arunachal Pradesh 792001

Advocate for : Nani Anju

Advocate for : Adam Tatak appearing for Karikho Kri and 3 Ors: Advocate ,

Linked Case : **Election Pet./8/2024**

Karikho Kri

Son of Late Sotri Kri, resident of Kri Niwas, Telluliang Village, PO and PS Tezu,
Lohit District, Arunachal Pradesh 792001

VERSUS

Dr Mohesh Chai and 3 Ors

Son of Late Tankakso Chai, resident of T Chai residence, Chai Colony, Tezu, PO and
PS Tezu, Lohit District, Arunachal Pradesh 792001 2:Badang Tayang

Age: 43

Occupation :

Son of Shri Banumso Tayang
resident of Telluliang Village

Tezu

PO and PS Tezu

Lohit District

Arunachal Pradesh 792001

3:Ms Jeremai Krong

Age: 0
Occupation :
Daughter of Late Turkho Krong
resident of Changliang Village
Tezu
PO and PS Tezu
Lohit District
Arunachal Pradesh 792001

4:The Returning Officer

Age: 0
Occupation :
for election to State Legislative Assembly for 44 Tezu (ST) Assembly Constituency
Arunachal Pradesh PO and PS Tezu
Lohit District
Arunachal Pradesh 79200

Advocate for the Petitioner : Adam Tatak, Kaling Mibang, Amy Talom, Tsering Gyatso, Tanur Gao, Tonni Gammi, Logsang Yountan

Advocate for the Respondent : Keprunda Mena, Kinyak Loya, Dicky Panging, Daina Tamuk, Marge D, Doge Lona, Kirmar Ado, Rosy c Lowangcha, Tokge Darin, l G Saikia, Bulia Pulu, Eho Menjo, N Rama

**BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 26.09.2024

Heard Mr. N. Anju, learned counsel for the applicant. Also heard Mr. A. Tatak, learned counsel for the opposite party/election petitioner and Mr. D. Panging, learned counsel for the opposite party No. 2.

2. By filing this interlocutory application, the applicant has prayed for grant of permission for release of Electronic Voting Machines (EVMs/VVPATs) for further use, which are kept in the Strong Room under the custody of District Election Officer, Tezu, Lohit District in respect of 44-

Tezu (ST) Assembly Constituency, as per the direction of the Election Commission of India.

3. It is the contention of the applicant that the opposite party No. 1/Election Petitioner has filed an Election Petition challenging the election of the respondent No. 2, which is pending before this Court. Since the election petition is pending in respect of the 44-Tezu (ST) Assembly Constituency, all the EVMs/VVPATs in respect of the constituency are still kept in a Strong Room at Tezu, as per the directives of the Election Commission of India and as a precautionary measure, which may be required in the trial of the election petition. It is further contended that the election petition does not disclose any pleading to preserve the EVMs/VVPATs which may be required for consideration of the election petition. In view of above, keeping the EVMs/VVPATs in the Strong Room till final dispose of the election petition, would be unnecessary. Therefore, the applicant prays for grant of permission, allowing the applicant to release the EVMs/VVPATs of the entire constituency from the Strong Room of the District Election Officer, Tezu, Lohit District for further future use, as and when required in any elections in the country.

4. Mr. A. Tatak, learned counsel for the opposite party No. 1/Election Petitioner, while objecting to the prayer made by the applicant, submits that if the EVMs/VVPATs are released from the safe custody for further use and randomization of the data, which are important for proper adjudication of the election petition, same may get lost, as there are certain mismatch in the casting and recording of the votes in the aforesaid EVMs/VVPATs, particularly Polling Booth Nos. 3, 11 and 15. Therefore, he

submits that the records/documents along with Electronic Voting Machines (EVMs/VVPATs) in respect of 44-Tezu (ST) Assembly Constituency are required to be preserved for proper adjudication of the election petition.

5. I have considered the submissions and perused the records.

6. On perusal of the election petition, the respondent No. 1/Election Petitioner has particularly pleaded *inter alia* at paragraph No. 20 (v) to the effect that there is certain mismatch of the casting of votes, as per the Form-17C casting of votes has been shown as 909 votes whereas, EVMs/VVPATs recorded 907 votes.

7. The instruction issued by the Election Commission of India regarding the use of EVMs in elections, *inter alia* provides that in case of any election, where election petition has been filed, if the EVMs are the subject of election petition, the EVMs used at polling station in the constituency concerned shall continue to be kept in the safe custody of the District Election Officer, till such time, the election petition is finally disposed of by the Court.

8. Having considered the pleadings in the election petition, as well as the relevant instructions issued by the Election Commission of India, I am of the considered view that since the EVMs/VVPATs would be a subject matter of the election petition as the respondent No. 1/election petitioner could show an allegation of mismatch in the casting of votes in respect of certain polling booths, it would not be appropriate to grant permission to release the EVMs/VVPATs.

9. Accordingly, the prayer for grant of permission to release the

EVMs/VVPATs is rejected. The Interlocutory application stands disposed of.

JUDGE

Comparing Assistant