

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-927-2022 (O&M)

Date of decision:- 11.11.2022

Anju Katyal and ors.

....Petitioners

vs.

Prescribed Authority cum Deputy Commissioner cum
Divisional Commissioner and anr.

...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MS. JUSTICE NIDHI GUPTA**

Present: Mr. B.R. Rana, Sr. Advocate with
Mr. Nayanadeep Rana, Advocate
for the petitioners.

Mr. Anil Mehta, Sr. Standing counsel with
Mr. Sanjay Ghai, Advocate and Mr. Mayank Sharma, Advocate
for respondent Nos. 1 to 4.

Mr. Chetan Mittal, Sr. Advocate with
Mr. Mayank Aggarwal, Advocate
Mr. B.S. Jaswal, Advocate
for respondent No. 6

Mr. Vivek K. Thakur, Advocate
for respondent No. 7

Mr. Prateek Gupta, Advocate
for respondent No.8

Ritu Bahri, J.

Petitioners have filed the present writ petition seeking a writ in the nature of mandamus and quo warranto for declaring the elections held on 08.01.2022 as well as results declared on the same date, to the posts of Mayor, Senior Deputy Mayor and Deputy Mayor of Municipal Corporation Chandigarh (Annexure P-11) as illegal and ab-initio void. Further prayer of

the petitioners is for setting aside notification dated 03.01.2022 (P-3) regarding nominations and elections of Mayor, Senior Deputy Mayor and Deputy Mayor of Municipal Corporation Chandigarh. Further prayer is for setting aside order dated 07.01.2022 (P-6) regarding conduct of elections on 08.01.2022 through secret poll.

On 20.01.2022, learned senior standing counsel appearing for U.T. Chandigarh has informed the Court that pursuant to representation dated 08.01.2022 (P-7), an order has been passed by Deputy Commissioner, U.T. Chandigarh on 09.01.2022, which was taken on record as Annexure 'X'. Further it has been stated that declaration of result has not been challenged and only a newspaper cutting has been placed on record as Annexure P-9. Learned counsel for the petitioner then sought time to amend the writ petition. Thereafter, C.M. No. 940-2022 was filed and the same was allowed and the amended CWP was taken on record.

On 04.02.2022, this Court passed the following order:-

“In the amended petition, the petitioners are now challenging the result dated 08.1.2022 (Annexure P-11). He has also placed on record the order dated 09.1.2022 (Annexure P-10) whereby the Deputy Commissioner, UT Chandigarh has forwarded their representation to the Presiding Officer for further necessary action. The main grievance of the petitioners is that while declaring the result Annexure P-11 to the post of Mayor, two votes were kept aside, however, one vote was taken to be in favour of the winning candidate while the second vote was discarded after observing that it was torn.

Notice of motion for 22.2.2022.

Learned counsel for the respondent-UT

Administration is directed to produce the original record, ballot papers and videography in a sealed cover alongwith detailed reply before this Court on the next date of hearing.”

On notice of the petition, a written statement dated 12/15.03.2022 was filed on behalf of respondent Nos. 1, 3 and 4. It has been stated that a representation dated 08.01.2022 was submitted by petitioner No. 1 with regard to election of Mayor. Thus, the objection was raised to only in respect to the post of Mayor. On the representation dated 08.01.2022 (R-1), an order dated 09.01.2022 (R-2) had been passed by respondent No. 1. The objection dated 08.01.2022 annexed with the present writ petition is not part of the office record of respondent Nos. 1, 3 and 4. The petitioners have manipulated and have tampered with the copy of the representation/objection submitted by petitioner No. 1 at first instance after the holding of elections to the posts of Mayor, Senior Deputy Mayor and Deputy Mayor on 08.01.2022. The stand taken in the written statement is that the writ petition is not maintainable as in the minutes of meeting dated 08.01.2022, no objection with regard to counting of votes or declaration of results to the posts of Sr. Deputy Mayor and Deputy Mayor had been raised by the petitioners nor any such objection as to the counting or declaration of results to the said posts of Sr. Deputy Mayor and Deputy Mayor had been raised in the objection/representation mentioned above. It has been stated that once the petitioners had filed their nominations pursuant to the notification of the election process vide notification dated 03.01.2022 (P-3) and the election process to the said posts had been set in motion and petitioners had participated in the election process and contest the elections

and remain unsuccessful, then the petitioners are estopped from questioning the notification dated 03.01.2022 (P-3).

The objections of the petitioners with respect to conducting of election through secret poll is concerned, reference has been made to Regulation 6 (6) of the Chandigarh Municipal Corporation (Procedure and Conduct of Business) Regulations, 1966 (for short 'Regulations 1966'), which was notified vide notification dated 16.12.1996, which lays down as under:-

“(6) When two or more validly nominated candidates offer themselves for election at the meeting the election shall be held by secret ballot in the manner hereinafter provided.”

Reference has further been made to Section 60 of the Punjab Municipal Corporation Law (Extension to Chandigarh) Act, 1994 with regard to Meeting for Election of Mayor. As per sub Clause (a) of Section 60, Meeting for the Election of Mayor shall be convened by the Divisional Commissioner who shall also nominate a councilor who is not a candidate for such Election to preside over the meeting. Section 60 reads as under:-

60. Meeting for election of Mayor

Notwithstanding anything contained in section 59

(a) meeting for the election of a Mayor shall be convened by the Divisional Commissioner who shall also nominate a councilor who is not a candidate for such election to preside over the meeting

(b) if during the election of Mayor it appears that there is an equality of votes between any candidates at such election and that the addition of a vote would entitle any of those candidates to be elected as Mayor, then the person presiding over the meeting shall decide between them by lot to be drawn in the presence of the candidates and in such manner as he may determine, and the candidate on whom the lot falls shall be deemed to have received an additional vote"

As per The Schedule of the Act for the reference "Divisional Commissioner the construction has been specified as "Prescribed Authority. The term "Prescribed Authority has been defined in Section 2(37A) of the Act to mean such authority or officer as the Administrator may, from time to time, by order to be published in the Official Gazette, prescribed and as per the proviso appended to Sub Clause the Administrator may prescribed different authorities or officers for different provisions of the said Act. In exercise of the powers conferred by Section 2 (37A) of the Act, the Administrator, Union Territory, Chandigarh vide notification dated 04.10.1994 (Annexure R-2) had prescribed Deputy Commissioner, U.T., Chandigarh as "Prescribed Authority" for the purposes of Sections 18, 20, 21, 22, 23, 24, 56, 60, 65 and 416 of the Act.

Thereafter, vide letter dated 17.12.2021 (R-3) written by Secretary, Municipal Corporation, Chandigarh, the Deputy Commissioner was requested to take necessary steps with respect to constitution of 6th House of the Corporation, oath taking by the Councillor and the election of Mayor, Senior Deputy Mayor and Deputy Mayor.

The State Election Commissioner, U.T. Chandigarh then notified the result of the general election to Municipal Corporation of Chandigarh held on 24.12.2021 in respect of all 35 wards vide notification dated 27.12.2021 (R-4).

On 30.12.2021, the office of respondent No. 1 issued the program and procedure for administering the Oath of Affirmation on 01.01.2022 to the elected Members according to Section 35 of 1994 Act, The Deputy Commissioner, U.T. Chandigarh administered the oath of

affirmation to all the 35 elected Councillors on 01.01.2022 in the Assembly Hall of the Municipal Corporation, Chandigarh. The Deputy Commissioner, U.T. Chandigarh exercising the powers of Divisional Commissioner/ Prescribed Authority vide notice dated 03.01.2022 directed that the meeting as per the provisions of Section 38 of the aforesaid Act be convened on 08.01.2011 and nominated Sh. Maheshinder Singh Sidhu, Counsillor- Respondent No. 5 as Presiding Authority. The nomination of Respondent No. 5 was in compliance of Section 60 (a) of the Act and Regulation 6 (1) of the Regulations and according to provisions appended to Section 38 (1) of the Act, the office of the Mayor shall be reserved in favour of a member who is a women for the first and four year of the Corporation. The list of nominated councillors as per Section 4 (3) (ii) of the 1994 Act had not yet been notified. Vide notice dated 03.01.2022 (R-5), the notice was also given under Section 60 of the Municipal Corporation Act, 1976 as applicable to U.T. Chandigarh read with Sub Section 2 of Regulation 6 and 8 of Chandigarh Municipal (Procedure and Conduct of Business) Regulations 1996 calling upon the councillors to file nomination in Form No. 1 obtainable from the Secretary, Municipal Corporation, Chandigarh for election to the posts of Mayor, Senior Deputy Mayor and Deputy Mayor of Municipal Corporation Chandigarh.

Thereafter, respondent No. 4 submitted the information vide letter dated 04.01.2022 (R-6) to the Deputy Commissioner U.T. Chandigarh with respect to receiving of nomination papers for election to the posts of Mayor, Senior Deputy Mayor and Deputy Mayor of Municipal Corporation Chandigarh.

“For Mayor

1. Smt. Anjy Katyal
2. Smt. Sarbjit Kaur

For Senior Deputy Mayor

1. Smt. Prem Lata
2. Sh. Dalip Sharma

For Deputy Mayor

1. Sh. Ram Chander Yadav
2. Sh. Anup Gupta

Thereafter, respondent No. 4 vide letter dated 04.01.2022 (R-7) addressed to all Councillors and Ex officio Member (M.P), Municipal Corporation, Chandigarh sent the minute to minute programme for the Election of Mayor, Senior Deputy Mayor and Deputy Mayor of Municipal Corporation Chandigarh.

The election to the post of Mayor was held in the meeting of the Municipal Corporation, Chandigarh on 08.01.2022 at 11:00 AM in the Assembly Hall of the Municipal Corporation, Chandigarh presided over by Respondent No.5 as Presiding Officer and attended by Respondent No.1 as the prescribed authority besides the elected Councilors and Ex officio member and the officers of the Municipal Corporation, Chandigarh. As there were two candidates for the post of Mayor as such the Election for the said post in the said meeting was held by Secret Ballot as per the mandate of Regulation 6(6) of the 1996 Regulations *ibid* in the manner provided in the above-mentioned Regulations. The casting of votes and their counting was done as per the provisions of the said Regulations and the result of the Election to the post of Mayor was declared by the Respondent No.5 and

Respondent No.8 was declared elected as Mayor, vide result sheet (Annexure R-8). The result is given below:-

"MAYOR

Total Votes Polled: 28

Number of Invalid Votes Polled: 1

Sr. No.	Name of the Candidates	Votes Secured	Remarks
1.	Smt. Anju Katyal	13	-----
2	Smt. Sarabjit Kaur	14	Elected

SENIOR DEPUTY MAYOR

Total Votes Polled: 28

Number of Invalid Votes Polled: Nil

Sr. No.	Name of the Candidates	Votes secured	Remarks
1.	Sh. Dalip Sharma	15	Elected
2	Smt. Prem Lata	13	----

DEPUTY MAYOR

Total Votes Polled: 28

By draw of lots one additional vote counted in favour of Sh. Anup Gupta

Number of Invalid Votes Polled:

Sr. No.	Name of the Candidates	Votes secured	Remarks
1.	Sh. Anup Gupta	14	(14+1=15)
2.	Smt. Ram Chander Yadav	14	-----

After the Election process, the Secretary, Municipal Corporation, Chandigarh sent the result of the election vide letter No.MCC/Secy./SAA/2022/14-15 dated 08.01.2022 to the Deputy Commissioner cum-Prescribed Authority, UT, Chandigarh-Respondent no 1 with a copy thereof forwarded to other officers of Chandigarh Administration. The copy of the said result was also put up on the notice board, as per letter dated 08.01.2022 (Annexure R-9). As per Section 60(b)

of the 1994 Act extracted here-in-above when there is an equality of votes between any candidates at such election then the person presiding over the meeting shall decide between them by lot to be drawn in the presence of the candidates and in such manner as he may determine, and the candidate on whom the lot falls shall be deemed to have received an additional vote.

After the completion of election process, the sealed secret ballot papers for election of the Mayor, Senior Deputy Mayor and Deputy Mayor, Municipal Corporation Chandigarh were kept in briefcase in the strong room of Central Treasury, U.T. Chandigarh vide letter dated 08.01.2022 (R-10).

The Minutes of 306th meeting of the Municipal Corporation, Chandigarh was held on 08.01.2022 (R-11) for the election of Mayor, Senior Deputy Mayor and Deputy Mayor have been circulated vide letter dated 21.01.2022 to all the Councillors. Thereafter, the Presiding Officer minutely observed all the votes that were objected to by the counting agents and after considering the same, declared the one ballot paper with tick mark on its back to be invalid as it amounted to putting an identification mark as per Rules and declared all other votes to be valid. The Presiding Officer announced that there total 28 votes were found polled out of which only one vote was found invalid as there was a tick mark on the other side of the ballot paper. The break up of the valid votes polled for the Election of the Mayor reads as under:-

Sr. No.	Name of the Candidates	Votes Secured
1.	Smt. Anju Katyal	13
2	Smt. Sarabjit Kaur	14
3.	Invalid vote	1

4. Total Votes cast 28

The Presiding Officer then declared respondent No. 6 having been elected as Mayor of the Municipal Corporation, Chandigarh for the year 2022. Respondent No. 7 was declared elected for the post of Sr. Deputy Mayor with the votes 15:13. Respondent No. 8 was declared elected for the post of Deputy Mayor as per draw of lots held pursuant to the equality of votes 14:14. No objection whatsoever had been raised with regard to counting of votes and declaration of results for Sr. Deputy Mayor and Deputy Mayor. The objections/representation dated 08.01.2022 (R-1) submitted by petitioner was also dismissed by respondent No. 1, vide order dated 09.01.2022 (R-12) and this order was not impugned in the instant writ petition.

A separate written statement was filed on behalf of respondent No. 6 taking a stand that the petitioners have not challenged the whole process of election and they have only challenged the election to the post of Mayor and Deputy Mayor. Further the objection filed by petitioner No. 1 has also been dismissed, vide order dated 09.01.2022 but this order was not challenged in the instant writ petition. The petitioners are estopped from challenging the appointment of respondent No. 5 as they have filed their nominations and participated in the election process.

Petitioner Nos. 1 to 3 also filed rejoinder to the reply filed by respondent Nos. 1, 3 and 4.

The main challenge in the present writ petition is to the post of Mayor as total 28 votes were found polled out of which only one vote was found invalid as there was a tick mark on the other side of the ballot paper.

Smt. Anju Katyal secured 13 votes and Sarabjit Kaur secured 14 votes. The grievance of petitioners before this Court is that was another vote which has not been discarded.

Learned senior counsel for the petitioners is relying upon judgment of Hon'ble the Supreme Court of India in a case of ***Shradha Devi vs. Krishna Chandra Pant and others***, 1982 AIR (SC) 1569 wherein petitioner was seeking scrutiny and recounting of votes on the allegation of misconduct. In this case, the remaining nine ballot papers had been rejected on the ground that by some mark on the ballot paper itself, the voter can be identified. The appeal was allowed and the operative part of the judgment reads as under:-

*“14. We may now turn to remaining nine ballot papers. Remaining nine ballot papers have been rejected on the ground that by some mark on the ballot paper itself the voter can be identified. There is a specific allegation to that effect in para 18 of the election petition. Before we examine each individual ballot paper, let the full import of the provision be made clear. Rule 73 (2) (d) provides that a ballot paper shall be invalid on which there is any mark or writing by which the elector can be identified. Section 94 of the 1951 Act ensures secrecy of ballot and it cannot be infringed because no witness or other person shall be required to state for whom he has voted at an election. Section 94 was interpreted by this Court in **Raghubir Singh Gill v. Gurcharan Singh Tohra**, (1980)3 SCR 1302, to confer a privilege upon the voter not to be compelled to disclose how and for whom he voted. To ensure free and fair election which is pivotal for setting up a parliamentary democracy, this vital principle was enacted in Section 94 to*

ensure that a voter would be able to vote uninhibited by any fear or any undesirable consequence of disclosure of how he voted. As a corollary it is provided that if there is any mark or writing on the ballot paper which enables the elector to be identified, the ballot paper would be rejected as invalid. But the mark or writing must be such as would unerringly lead to the identity of the voter, Any mark of writing of an innocuous nature or meaningless import cannot be raised to the level of such suggestive mark or writing as to reveal the identity of the voter.

On the other hand, learned counsel appearing for U.T. Chandigarh has argued that the judgment cited by learned senior counsel for the petitioners has been examined by Hon'ble the Supreme Court in a case of ***Arikala Narasa Reddy vs. Venkata Ram Reddy Reddygari and another***, 2014 (1) R.C.R (Civil) 935 wherein there was dispute with regard to validity of 04 votes. High Court has to decide the petition on the basis of disputed votes. It was held that the High Court cannot direct re-counting of votes and decide the election petition or recrimination petition on the basis of recount of votes. In para 17 & 18, it has been observed as under:-

7. If all the judgments referred to herein above in respect of interpreting the provisions of Rule 73(2)(d) are conjointly considered, we are of the opinion that there must be some casual connection between the mark at the identity of the voter and such writing or marking itself must reasonably give indication of the voter's identity As to whether such marking or writing in a particular case would disclose the identity of the voter, would depend on the nature of writing or marking on the ballot involved in each case. Therefore, such marking or writing must be such as to draw an inference about the identity of the voter. To that extent, with all humility at our command, we have to say that word "unerringly used by this Court in Km. Shradha Devi (supra) is not in consonance with the law laid down by the Constitution Bench of this Court in Dr. Anup Singh (supra).

18. This brings us to the next question involved herein as to whether election petition and recrimination petition have to be tried simultaneously. In a composite election petition wherein the petitioner claims not only that the election of the returned candidate is void but also that the petitioner or some other person be declared to have been duly elected, Section 97 of the Act comes into play and allows the returned candidate to recriminate and raise counter-pleas in support of his case, "but the pleas of the returned candidate under Section 97 have to be tried after a declaration has been made under Section 100 of the Act. The first part of the enquiry is in regard to the validity of the election of the returned candidate which is to be tried within the narrow limits prescribed by Section 100 (1) (d) (ii) while the latter part of the enquiry governed by Section 101 (a) will have to be tried on a broader basis permitting the returned candidate to lead evidence in support of the pleas taken by him in his recrimination petition. If the returned candidate does not recriminate as required by Section 97, then he cannot make any attack against the alternative claim made by the election petitioner. In such a case an enquiry would be held under Section 100 so far as the validity of the returned candidate's election is concerned, and if as a result of the said enquiry, declaration is made that the election of the returned candidate is void, then the Tribunal will proceed to deal with the alternative claim, but in doing so, the returned candidate will not be allowed to lead any evidence because he is precluded from raising any pleas against the validity of the claim of the alternative candidate. (Vide: Jabar Singh v. Genda Lal, AIR 1964 Supreme Court 1200; Ram Autar Singh Bhadauria v. Ram Gopal Singh & Ors., AIR 1975 Supreme Court 2182; and Bhag Mal v. Ch. Parbhu Ram & Ors., AIR 1985 Supreme Court 150).

He has further referred to the judgment of Hon'ble the Supreme Court of India in a case of ***M. Narayana Rao vs. G. Venkata Reddy and others***, 1997 (1) SCC 771 wherein Hon'ble the Supreme Court was examining a case of rejection of 338 votes on the ground that there was mark on the reverse side of the symbol and not on the observe side. The appeal was allowed and in para No. 35 and 36, it has been observed as under:-

“35.The first objection raised on behalf of Reddy relates to

rejection of 338 votes apparently appearing to have been cast in his favour but were rejected on the ground that the marks given on them were on the reverse side of the symbol and not on the obverse side. Several such votes apparently cast in favour of Rao were also rejected. Mr. Sen submitted that 338 votes ought to have been treated as validly polled by Reddy. We do not accept this contention to be sound. In our opinion the High Court has rightly maintained their rejection. Rule 39(2)(b) of the Conduct of Election Rules, 1961--hereinafter referred to as the Rules, requires:

(2) The elector on receiving the ballot paper shall forthwith;

(a) proceed to one of the voting compartments;

(b) there make a mark on the ballot paper with the instrument supplied for the purpose on or near the symbol of the candidate for whom he intends to vote;"

On a plain reading of the said rule it is clear that the voter has to make the mark on the ballot paper and not behind the ballot paper. The symbols are given on the obverse or the front side of the ballot paper and the requirement of the rule to mark on the ballot paper on or near the symbol of the candidate for whom the elector intends to vote necessarily means marking on the obverse side either on the symbol itself or so near it as to clearly indicate the intention of the voter. Putting a mark on the reverse side even though because of the thinness of the paper the symbol may be visible is far from complying with the requirement of the rule.

Such a mark will make the ballot paper in substance and in effect bearing no mark at all within the meaning of clause (b) of sub-rule (2) of rule 56 of the Rules or bearing a mark indicating the vote thereon placed in such a manner as to make it doubtful to which candidate the vote has been given justifying its rejection under clause (d). Mr. Sen called our attention to the recent amendment of the Rules made in 1974 wherein it has been clearly specified that the mark must be put on the face of the ballot paper and also that the ballot paper must be rejected if it does not bear a mark on the face, and submitted that on the language of the rules as they stood at the relevant time in this case ballot papers bearing mark on the reverse side against the symbol of a particular candidate indicating the choice of the voter could not be rejected as invalid. We think that the amendment of the rule merely clarifies what was intended earlier and does not make any change or departure from the previous position. Since some High Courts had taken a contrary view while considering the rules or similar rules, for the sake of clarification and precision, it appears to us, that amendment of

the rule became necessary. A single Judge of the Andhra Pradesh High Court dealing with similar Gram Panchayat Rules had taken a contrary view in W.P. 2851/70, decided on 10-12-1970. The learned Judge followed the decision of the Allahabad High Court in Swarup Singh v. Election Tribunal(1) and a decision of the Rajasthan High Court in Dhanpatlal v. Harisingh (2). We hold that the view expressed in those cases is not correct. On the contrary the decision of the Madras High Court in A. V. Palaniawami v. The Election Court (District Munsif), Tiruppur and others(3) in this regard expresses the correct opinion. The point in that case, has been well discussed with reference to various authorities both in India and other countries. We would like to refer to the dictum of Baron Pollock in Mr. Sykee v. Mr. Arthur(4) wherein it has been said that the mark must be on the face of the ballot paper and that the vote bearing cross on the back being not in compliance with the Act was rightly rejected. On the basis of the decision aforesaid as also on some others a passage is to be found at page 140 in Halsbury's Laws of England, Third Edition, Vol. 14 to the following effect:

"A ballot paper marked on the back only should not be counted, even though the mark shows through the paper on to the front".

36.The High Court has noticed in its judgment paragraph 17(k) of Chapter VIII of the Hand Book issued and published by the Election Commission in 1972 for the guidance of the Returning Officers. While indicating the procedure for counting, the Returning Officers have been instructed to reject a ballot paper when there is no mark at all on the front or when the mark is in blank area, that is to say at the back or entirely in the shaded area. It is no doubt true that the binding directions either generally or specially could be issued by the Election Commission under sub-rule (1) of Rule 56.. Sub-rule (2) does not speak about the issuance of any such directions. Even so in our opinion the administrative instructions issued by the Election Commission give a clue to the interpretation of rule 39(2) and rule 56(2) of the Rules. The instructions so issued are in consonance with the interpretation of the rules aforesaid as put by us."

Mr. Mittal, learned senior counsel appearing for respondent No. 6 has referred to Division Bench judgment of Himachal Pradesh High Court in a case of **Smt. Vimla Devi vs. State of Himachal Pradesh and others**, 1999 AIR (Himachal Pradesh) 38 wherein petitioner and respondent

No. 4 contested for the office of Pradhan, Gram Panchayat Nanj in the year 1995. Respondent No. 4 secured 350 votes and petitioner secured 349 valid votes. Respondent No. 4 was declared as winner and this declaration was challenged by the petitioner. The writ petition was dismissed and in para No. 13, it has been observed as under:-

“13. First contention of the learned counsel was that there were total 713 polled votes for the office of the Pradhan whereas only 711 votes were put to counting at the time of counting of votes and the remaining 2 votes were found in the box meant for Zila Parishad and thus there was loss of two votes for the office of Pradhan. This mistake was noticed by the S.D.O(C)-cum-Authorised Officer due to the fault of the Presiding Officer CW-2 Shri Durga Singh. If the mistake has been committed by the Presiding Officer Shri Durga Singh, it cannot be presumed that those two votes were cast in favour of the petitioner and ought to have been counted in her favour. Out of 711 votes polled in the ballot box of electing Pradhan of Gram Panchayat, Nanj, 12 votes were found invalid. There is no provision under the Act or Election Rules that the torn vote not in two pieces should not be counted for. Scrutiny and rejection of ballot papers find mention in Rule 76 and we find no such prohibition of counting of torn vote which was not in two pieces. The Authorised Officer has found from the record that no invalid note was counted in favour of respondent No. 4 therefore, the findings of the Authorised Officer are legal and valid on issue No. 3. The petitioner could not prove on record that the result of the election was influenced by anyone as alleged by her in her election petition and she could not establish her allegation on issue No. 2 which has been rightly decided by the Authorised Officer and has attained finality. The next submission of the learned counsel was that recounting of the polled votes was not allowed by the Returning Officer is not

sustainable for the reason that it has been proved on record by respondent No. 4, Assistant Returning Officer and Presiding Officer that on oral request of the petitioner recounting was done twice. The petitioner herself has admitted in her cross-examination before the Authorised Officer that while counting at the first time there was a difference of three votes and on counting the second time there was a difference of one vote between her and respondent No. 4. The Authorised Officer has decided issue No. 2 in favour of respondent No. 4 based on the appreciation of evidence and we are not inclined to reappreciate the evidence in the writ petition while exercising the jurisdiction under [Article 226](#) of the Constitution more particularly when the petitioner has not challenged the findings of the Authorised Officer on issue No. 2 by way of election appeal provided under the provisions of the Act.

Heard learned counsel for the parties at length.

It is not in dispute that the total votes which were polled were 28, 27 votes were found to be valid. Out of 27 votes, petitioner secured 13 votes and Sarabjit Kaur secured 14 votes. Thus, Sarabjit Kaur was declared as winner for the post of Mayor. One vote which was found to be invalid was having a mark on it. The grievance of petitioner No. 1 before this Court is that there was one vote, which was torn and that vote was also counted.

Reference at this stage can be made to Regulation 6 (4) to 6 (13) of the 1996 Regulations which reads as under:-

“6. *Election of Mayor*

- (4) Any candidate may withdraw his candidature by giving it in writing at any time before the election is proceeded with in the meeting.
- (5) When there is only one candidate validly nominated or when after withdrawal of candidature there is only one such candidate, the presiding

authority shall declare him to be duly elected as Mayor.

(6) When two or more validly nominated candidates offer themselves for election at the meeting the election shall be held by secret ballot in the manner hereinafter provided.

(7) Ballot papers containing the names of persons duly nominated shall be furnished to the members at the meeting.

(8) The ballot box shall remain open for the casting of votes for such period as may be fixed by the presiding authority.

(9) No member shall vote for more than one candidate. At the time of voting, each member shall place a cross (X) on the right hand side of the ballot paper opposite the name of the candidate for whom he wishes to vote, and will then fold the ballot paper and without showing the front of the paper to any person, insert the same in the ballot box in the presence of the presiding authority.

(10) if a member votes for more candidates than one or places any mark on the paper by which he may be identified, his ballot paper shall be considered invalid any will not be counted. A vote recorded on a ballot paper used at the meeting shall be rejected if the marks indicating the vote is placed on the ballot paper in such a manner as to make it doubtful to which candidate the vote has been given.

(11) As soon as the period fixed for casting of votes is over, the presiding authority shall open the ballot box and initial each ballot paper

(12) The votes for all the candidates shall then be counted by the presiding authority with the assistance of the Municipal Officials or employees as may be designated by the presiding authority and the candidates shall be arranged in the order of the number of votes obtained by each of them.

(13) If there are only two candidates, then the one who gets the larger number of votes shall be declared elected."

The issue of torn vote has been discussed in ***Smt. Vimla Devi's case (supra)*** wherein it has been held that there is no provision under the Act or Election Rules that torn votes not in two pieces should not be counted. There is no prohibition to count such votes.

With respect to vote which was held to be invalid in the present case, this issue has also been considered in ***Arikala Narasa Reddy's case (supra)*** wherein ***Shradha Devi's case supra*** has also been discussed and

the observation made in *Shardha Devi's case supra* that if there is any mark or writing on ballot paper which enables the elector to be identified, the ballot paper would be rejected, was held to be invalid. It has been opined that there must be some casual connection between the mark and the identity of the voter and such writing or marking itself must reasonably given indication of the voter's identity. It has been held that the word unerringly used in *Shradha Devi's case supra* was not in consonance with the law laid down in *Dr. Anup Singh (AIR 1965 SC) 815*

With respect to marking and writing of ballot papers is concerned, the same is governed by the Conduct of Election Rules, 1961. Reference at this stage can further be made to *Arikala Narasa Reddy's case (supra)* wherein this issue has been discussed in para No. 13 and 14 of the judgment, which reads as under:-

13. The issue of marking and writing on ballot papers is governed by the Conduct of Elections Rules, 1961 (hereinafter referred to as 'Rules'). Rule 73(2) of the Rules reads as under:

“73. Scrutiny and opening of ballot boxes and the packets of postal ballot papers:

(1) xx xx xx (

2) A ballot paper shall be invalid on which-

(a) the figure '1' is not marked; or

(b) the figure '1' is set opposite the name of more than one candidate or is so placed as to render it doubtful to which candidate it is intended to apply; or

(c) the figure '1' and some other figures are set opposite the name of the same candidate; or

(d) there is any mark or writing by which the elector can be identified.

xx xx xx”

14. *In Dr. Anup Singh v. Shri Abdul Ghani & Anr., AIR 1965 SC 815*, a Constitution Bench of this Court considered the provisions of Rule 73(2)(d)

which provides that a ballot paper shall be invalid if “there is any mark or writing by which the elector can be identified”. The Court observed as under:

“10...Thus there are three possible interpretations of the words "by which the elector can be identified" appearing in Rule 73(2) (d), namely (i) any mark or writing which might possibly lead to the identification of the elector, (ii) such mark or writing as can reasonably and probably lead to the identification of the elector, and (iii) the mark or writing should be connected by evidence aliened with an elector and it should be shown that the elector is actually identified by such mark or writing.

Thus the judgments of Hon'ble the Supreme Court is very clear from the very beginning that any mark or writing which might possible lead to identification of the voter, that vote should be held invalid.

Further a torn vote cannot be discarded as invalid and there is no prohibition to count such votes, keeping in view *Smt. Vimla Devi's case (supra)* and keeping in view Regulation 6 (4) to 6 (13) of the 1996 Regulations.

In view of the above discussion, the present petition stands dismissed.

However, the records deposited with the Registrar Judicial vide order dated 22.02.2022 be returned to Joint Commissioner cum Secretary, Municipal Corporation, Chandigarh by today itself.

(RITU BAHRI)
JUDGE

11.11.2022
G Arora

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No