

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 24.01.2024

(i) CWP-1260-2024

Kuldeep KumarPetitioner

Versus

U.T., Chandigarh and othersRespondents

(ii) CWP-1350-2024

Kuldeep KumarPetitioner

Versus

U.T., Chandigarh and othersRespondents

**CORAM: HON’BLE MR. JUSTICE SUDHIR SINGH
HON’BLE MR. JUSTICE HARSH BUNGER**

Present: Mr. Gurminder Singh, Senior Advocate, assisted by
Mr. Ferry Sofat, Advocate,
Mr. RPS Bara, Advocate,
Mr. Gaurav Garg Dhuriwala, Advocate and
Mr. K.S. Kharbanda, Advocate, for the petitioners.

Mr. Anil Mehta, Senior Standing Counsel, U.T.,
Chandigarh, along with Mr. Sanjiv Ghai, Advocate,
Mr. Sumeet Jain, Advocate,
Mr. Himanshu Arora, Advocate,
Mr. Pradeep Sharma, Advocate,
Mr. Rohit Kaushik, Advocate and
Mr. Nishant Indal, Advocate,
for respondent Nos. 1 and 2.

Mr. Chetan Mittal, Senior Advocate, assisted by
Mr. Kunal Mulwani, Advocate,
for respondents No. 3 and 4.

Mr. Manish Bansal, P.P. U.T., Chandigarh along with
Mr. Rajeev Anand, APP, U.T., Chandigarh and
Mr. Navjit Singh, Advocate,
for respondents No. 5 and 6.

SUDHIR SINGH, J.

1. This order shall dispose of the above mentioned two
writ petitions as common questions of law and facts are involved

therein. Both the writ petitions pertain to the elections to the posts of Mayor, Senior Deputy Mayor and Deputy Mayor of the Municipal Corporation, Chandigarh.

2. It would be relevant to point out that earlier the petitioner had filed CWP-1201-2024 praying therein for issuance of directions to the Deputy Commissioner, U.T., Chandigarh to ensure free and fair elections to the posts of Mayor, Senior Deputy Mayor and Deputy Mayor of the Municipal Corporation, Chandigarh, which were scheduled to be held on 18.01.2024 with a further prayer that a Court Commissioner be appointed to supervise the said election process. The said writ petition was disposed of by a Coordinate Bench of this Court, vide order dated 17.01.2024, which would read as under:-

“(1) Through the present petition the petitioner invokes the extra ordinary writ jurisdiction of this Court for issuance of a direction to the Deputy Commissioner, U. T., Chandigarh to ensure that free and fair elections take place to the posts of Mayor, Senior Deputy Mayor and Deputy Mayor of the Municipal Corporation, Chandigarh, which are scheduled to be held on 18.01.2024 with a further prayer that this Court may appoint a Court Commissioner to supervise the election process.

(2) After arguing the matter for some time, learned counsel for the petitioner submits that he has express instructions from the petitioner not to press the afore prayers and that he would be satisfied if the present petition is disposed of by issuing directions to the official respondents to acknowledge acceptance of the withdrawal of candidature by Mr. Jasbir Singh for the post of Mayor, Ms. Neha for the post of Senior Deputy Mayor and Ms. Poonam for the post of Deputy Mayor as also to direct the official respondents to issue passes to the persons nominated by the contesting candidates

who could then watch the proceedings of the elections as also to declare the list of eligible candidates well in time. He further prays for issuance of appropriate directions to the official respondents to also videograph the entire voting/election process.

(3) Mr. Anil Mehta, who appears for respondents No.1 to 4 submits that there is no occasion for this Court to issue the afore directions alternatively being prayed for by the petitioner as the official respondents duly acknowledge the withdrawal of candidature by Mr. Jasbir Singh, Ms. Neha and Ms. Poonam and that they shall issue passes and also publish the list of eligible candidates as per the due process, in accordance with law. Mr. Mehta further submits that like earlier, the official respondents would also be conducting videography of the entire voting/election process.

(4) Mr. Munish Bansal, who appears on behalf of respondents No.5 and 6 also assures this Court that the Chandigarh Police will leave no stone unturned to ensure free and fair elections in the Municipal Corporation, Chandigarh which are scheduled to be held tomorrow.

(5) In the light of the afore fair stand taken by the respondents, no further orders are required to be passed.

(6) Disposed of.”

3. In spite of an undertaking having been given by respondent Nos.5 and 6 therein i.e. Director General of Police, U.T., Chandigarh and Senior Superintendent of Police, U.T., Chandigarh, when the elections were not held on 18.01.2024, as scheduled, the petitioner filed CWP-1260-2024 on 18.01.2024 itself, wherein the Mentioning Bench, passed the following order:-

“Mentioning has been made in the post lunch session solely on the ground that elections to the posts of Mayor, Senior Deputy Mayor and Deputy Mayor of Chandigarh Municipal Corporation, are to be held today

i.e. 18.01.2024. It has further been brought to the notice of the undersigned that the Division Bench had passed orders in CWP NO. 1201 of 2024 late in the evening yesterday, which has been appended as Annexure P.4.

Mr. Gurminder Singh, Senior Advocate, has stressed that apprehension for not holding the elections is on the ground that one of the nominated councilor Mr. Anil Masih has allegedly taken leave being unwell, while referring to Annexure P.5.

Keeping in view the exigency of the situation, the request for listing the case today is allowed, in the presence of Mr. Anil Mehta, Sr. Standing Counsel for U.T., Chandigarh and Mr. Chetan Mittal, Senior Advocate with Mr. Kunal Mulwani, Advocate, for the Municipal Corporation. Accordingly, office is directed to list the case today as per roster.

It is made clear that the said observations are made only for the purpose of listing the present writ petition today.”

4. As per the facts contained in the writ petition(s), elections for the posts of Mayor, Senior Deputy Mayor and Deputy Mayor, fixed for 18.01.2024, were to be conducted in terms of the Notification dated 10.01.2024 (Annexure P.1) issued by respondent No.2-Deputy Commissioner, U.T., Chandigarh, as per Sections 38 and 60 of the Punjab Municipal Corporation Act, 1976, as applicable to U.T., Chandigarh vide the Punjab Municipal Corporation Law (Extension to Chandigarh) Act, 1994 read with Regulations 6(1) and 8 of the Chandigarh Municipal Corporation (Procedure and Conduct of Business) Regulations, 1996. As apparently, despite the undertaking given before the Coordinate Bench by and on behalf of respondent Nos.5 and 6,

the elections were not held for one or the other reason, the petitioner filed CWP-1260-2024, before this Court.

5. In the course of hearing on 18.01.2024, it was pointed out by Mr. Anil Mehta, Senior Standing counsel for respondent Nos. 1 and 2, that the elections could not be held on 18.01.2024, due to the illness of the Presiding Officer Mr. Anil Masih and on account of law and order situation. Further, during the course of arguments, Mr. Mehta, had produced a letter dated 18.01.2024 by which the date of elections was postponed to 06.02.2023 on two grounds, i.e. firstly, the Presiding Officer, had fallen ill and secondly owing to the law and order situation in U.T., Chandigarh. However, this Bench, while taking strong exception to the production of such letter in the Court as the same was produced without moving an appropriate application accompanied by an affidavit, returned the same to Mr. Mehta.

6. CWP-1260-2024 was accordingly fixed for hearing on 23.01.2024, so as to enable the respondents to file their counter(s).

7. In the meantime, the petitioner filed another writ petition i.e. CWP-1350-2024, seeking issuance of writ of Certiorari quashing the impugned order dated 18.01.2024 (P.6), whereby the elections to the posts of Mayor, Senior Deputy Mayor and Deputy Mayor, were rescheduled for 06.02.2024. The said writ petition came up for hearing before us on 20.01.2024. Notice of motion was issued and the said writ petition was ordered to be listed along with CWP-1260-2024, on 23.01.2024.

8. It may be pointed out that when the matters were taken up for hearing on 23.01.2024, after hearing the submissions advanced by the counsel for the parties, this Court observed that the postponement of the elections in question for a period of 18 days was unreasonable and that too on the grounds of law and order situation and the Presiding Officer, having fallen ill. To this, learned counsel for the respondents had sought time to seek instructions and apprise this Court about the further course of action by 24.01.2024. Thus, the matters are taken up for hearing today.

9. While adjourning the matters for today, this Court had hoped that a better sense would prevail upon the respondents to pre-pone and conduct the elections in question at the earliest, but to no avail and thus, this Court, has no option, but to proceed to hear the final arguments today itself.

10. Learned Senior counsel appearing for the petitioner would submit that in terms of the mandate of the Constitution as contained in Chapter IXA, Articles 243ZA and 243ZB and Sections 38 and 60 of the Punjab Municipal Corporation Act, 1976 as extended to the Union Territory, Chandigarh, vide the Punjab Municipal Corporation Law (Extension to Chandigarh) Act, 1994 and Chandigarh Municipal Corporation (Procedure and Conduct of Business) Regulations, 1996, the respondents are bound to conduct the elections to the posts of Mayor; Senior Deputy Mayor and Deputy Mayor, on yearly basis. It is further submitted that with the tenure of the previous Mayor, Senior Deputy Mayor and Deputy Mayor, having come to an end,

respondent No.2 had issued a notification on 10.01.2024 scheduling the elections for 18.01.2024 and in order to conduct the said elections, one Mr. Anil Masih, was nominated as the Presiding Officer. Such mandate was followed in order to ensure free, fair and an impartial election. However, on the said very date, a totally frivolous stand was taken by the Administration that as Mr. Anil Masih had fallen ill, the elections, could not be conducted, as scheduled. He further submits that the sole objective of the respondents is to defeat the lawful right of the alliance i.e. Aam Aadmi Party and the Congress. The issuance of the impugned notification dated 18.01.2024 deferring the elections to 06.02.2024, clearly establishes a mala-fide intent of the respondents.

11. The learned Senior counsel further submits that the very conduct of the respondents, especially respondent Nos. 5 and 6, who had given an undertaking before the Coordinate Bench on 17.01.2024 that they would leave no stone unturned to ensure free and fair elections in the Municipal Corporation, Chandigarh, is contemptuous and they should be proceeded accordingly, for violation of such undertaking.

12. Learned Senior Counsel for the petitioner still further submits that the impugned order passed by respondent No.2 is without jurisdiction and non-est in the eyes of law as to his understanding, there is no source in any statute, vesting upon him any power to pass such order.

13. On the other hand, Mr. Anil Mehta, Senior Standing counsel appearing for respondents No. 1 and 2 and Mr. Chetan

Mittal, Senior Advocate assisted by Mr. Kunal Mulwani, Advocate, appearing for respondent Nos. 3 and 4, submit that the alliance Councillors (i.e. Aam Aadmi Party and the Congress), have been coming to the Office of Municipal Corporation with 50-60 number of Punjab Police Commandos and they have taken the entire system for ransom and with a view to avoid any untoward incident, the elections have been deferred. In support of their assertions, they submit that they are in possession of the videos of such elements and the same are annexed with the reply filed by respondent Nos. 5 and 6. It is further submitted that 06.02.2024 is not that far a date, which can be termed as unreasonable and owing to the police force having been engaged in the preparations of the Republic Day and subsequent retreat ceremony, the Administration is not in a position to conduct the elections before 06.02.2024.

14. Mr. Mehta submits that as per the police report dated 18.01.2024 (Annexure R.4 with the reply filed by respondent Nos. 1 and 2 in CWP-1350-2024), the Director General of Police, has enumerated therein all the circumstances and situations so as to conclude that there may be a law and order situation.

15. Apart from that, Mr. Mehta, also refers to the report dated 19.01.2024 (Annexure R.7 to the reply filed by respondent Nos. 1 and 2 in CWP-1350-2024) submitted by the Joint Commissioner, M.C., Chandigarh, to the Deputy Commissioner, U.T., Chandigarh requesting for making proper security arrangements for conducting the elections smoothly by placing

reliance upon an incident report dated 19.01.2024 attached to the above said report, to contend that there was sufficient ground for deferring the elections, which was scheduled for 18.01.2024.

16. Mr. Chetan Mittal, Senior Advocate appearing for the Municipal Corporation, submits that in the instant case, the date of elections has already been fixed as 06.02.2024 which is not a far off date and that there is no averment in the writ petition so as to make out a case to prepone the date of elections. Still further, he submits that from the entire pleadings of the petitioner as contained in the writ petition, it would transpire that the petitioner has averred that if the date of elections is not preponed then the same would jeopardize the entire election process and pave the way for horse trading. However, no circumstances or grounds or the trouble(s) created to the petitioner and/or the other Councillors, have been pleaded so as to justify such averments. Accordingly, he prays for dismissal of the writ petition. Learned counsel representing respondents 1 to 4 have referred to the judgments in the cases of Jayantbhai Manubhai Patel and others Vs. Arun Subodhbhai Mehta and others, (1989)2 SCC 484; Vipul Jain Vs. State of Uttarakhand, MANU/UC/0808/2019 and Karun Kanti Malakar Vs. Nosir Ahmed Mazumdar, 2010(3) GauLT 415.

17. Mr. Manish Bansal, learned Public Prosecutor, appearing for respondent Nos. 5 and 6, echoes the arguments advanced on behalf of respondent Nos. 1 to 4.

18. We have heard the learned counsel for the parties and with their able assistance, have also gone through the case files.

19. The factum of elections to the posts of Mayor, Deputy Mayor and Senior Deputy Mayor of the Municipal Corporation, Chandigarh, on yearly basis in terms of the mandatory provisions noticed above, is not in dispute. This Court is not entering into the process of election. Further, this Court is also not going into the argument of the learned Senior Counsel for the petitioner that respondent No.2 did not have any jurisdiction to issue/pass the impugned notification/order dated 18.01.2024, for the reason that he could not counter the query of this Court that if respondent No.2 had the jurisdiction to issue/pass the notification/order dated 10.01.2024, why he should be divested of such power, while passing the subsequent order dated 18.01.2024

20. As would emerge from the pleadings raised and arguments advanced on behalf of the respondents, the elections in question have been deferred owing to the illness of Mr. Anil Masih, Presiding Officer and due to law and order situation. This Court does not find any justification in the first ground as if Mr. Anil Masih had fallen ill, respondent No.2 being Prescribed Authority under the Act, was within his right to nominate and/or appoint any other Presiding Officer.

21. Therefore, the only issue that arises for determination is:-

“Whether in the light of the mandate as noticed above, the Prescribed Authority (Deputy Commissioner, U.T., Chandigarh) was justified in deferring the elections to the posts of Mayor, Senior Deputy Mayor and Deputy Mayor of the Municipal Corporation, Chandigarh, on the ground of law and order situation, and that too for a period of 18 days?

22. Coming to the issue of law and order situation, suffice it to say that no convincing argument has been advanced on behalf of the respondents, especially, respondent Nos. 1 and 2 and 5 & 6, to justify the period of 18 days’ deferment in the elections in question. One could have understood the situation, if there was any emergent crisis or natural calamity. However, there being none, we are constrained to observe that the grounds to defer the elections in question, are totally absurd and frivolous. A perusal of the letter dated 18.01.2024 (Annexure R.4 with the reply of respondent Nos.1 and 2 in CWP-1350-2024), would manifest that the Director General of Police, U.T., Chandigarh, had only observed regarding likelihood that as and when the elections are going to be held, a large number of supporters of all the major political parties, may gather at the Municipal Corporation Office, Chandigarh, which may create law and order situation and possibility of clashes amongst their supporters, cannot be ruled out. Further, the incident report dated 19.01.2024, as regards the occurrence dated 16.01.2024, is much after the earlier scheduled date of elections i.e. 18.01.2024. A perusal of the said incident report would indicate that on 16.01.2024 at about 16:45 hours, about 10 Commandos

of Punjab Police, had entered the Office of one Mr. Sodhi, who was stated not to be in his office and public approximately more than 100 persons gathered and scuffled amongst themselves. It is further stated in the said report that the Commandos of the Punjab Police, were standing at Gate No.3 and had parked their Gypsy in between the Gate and blocked the ingress and outgress and the said occurrence was recorded in the CCTV Cameras.

23. Upon considering the letter dated 18.01.2024 and also the incident report dated 19.01.2024, it is observed that the contents thereof do not disclose any emergent crisis or natural calamity, for which the elections had to be postponed. It is evident that the apprehensions expressed in the letter dated 18.01.2024 (R.4 above) only pertains to the supporters of the different political parties gathering at the venue and the incident report dated 19.01.2024 (R.7 above), refers to the police commandos of other State, present at the venue of the elections on 16.01.2024. In our considered view, the aforesaid apprehensions/observations, were not that grave so as to fall within the definition of emergent crisis or natural calamity and also leading to a situation, which could not have been addressed by the Administration.

24. Further, the argument raised by Mr. Mehta regarding the occurrence of 16.01.2024 on the strength of the incident report dated 19.01.2024 (Annexure R.7) loses its significance, in view of the very fact that when CWP No. 1201 of 2024 came up for hearing before the Coordinate Bench on 17.01.2024 (when it was finally disposed of), not a whisper regarding the said

incident of 16.01.2024 was made by Mr. Mehta or Mr. Bansal, during said proceedings, which would be evident from the order dated 17.01.2024 itself passed by the Coordinate Bench and rather, an undertaking was given that the elections would be conducted on 18.01.2024 in a free and fair manner.

25. The submissions made by Mr. Mittal, learned Senior Counsel for the Municipal Corporation, that the writ petition lacks pleadings/grounds which may warrant the preponement of the date of elections, need not be adverted to in view of the fact that we have also confined to the issue regarding the validity/justification of the impugned order dated 18.01.2024 deferring the elections, on the twin ground i.e. illness of the Presiding Officer and law and order situation. Still further, we have also considered the judgments referred by the counsel representing respondent Nos. 1 to 4, however, it is observed that the said judgments are distinguishable on facts as well as the issues involved therein and no detailed reference to the same is being made herein.

26. A Five-Judge Constitution Bench of the Hon'ble Supreme Court in **Special Reference No.1 of 2002 – In Re:- (Gujarat Assembly Election Matter) (2002)8 SCC 237**, while considering the issue of elections to the Gujarat Legislative Assembly, has held that it is the duty of the authorities concerned to conduct the elections within time frame and that the law and order situation cannot ordinarily be a ground to postpone the elections or not holding the same within time. It was held as under:-

“Question No. (iii):

87. Again, this question proceeds on the assumption that the provision of Article 174(1) also apply to a dissolved Assembly. In view of our answer to question No. (i), we have already reported that Article 174(1) neither applies to a prematurely dissolved Legislative Assembly nor does it deal with elections and, therefore, the question that the Election Commission is required to carry out the mandate of Article 174(1) of the Constitution does not arise. Under Article 324, it is the duty and responsibility of the Election Commission to hold free and fair elections at the earliest. No efforts should be spared by the Election Commission to hold timely elections. Ordinarily, law and order or public disorder should not be occasion for postponing the elections and it would be the duty and responsibility of all concern to render all assistance, cooperation and aid to the Election Commission for holding free and fair elections.”

27. Subsequently, another 5-Judge Bench of the Hon’ble Apex Court reiterated the said view in Kishan Singh Tomar Vs. Municipal Corporation of the City of Ahmedabad, (2006) 8 SCC 352, and it was held as under:-

“It is true that there may be certain man-made calamities, such as rioting or breakdown of law and order, or natural calamities which could distract the authorities from holding elections to the Municipality, but they are exceptional circumstances and under no circumstance the Election Commission would be justified in delaying the process of election after consulting the State Govt. and other authorities. But that should be an exceptional circumstance and shall not be a regular feature to extend the duration of the Municipality. Going by the provisions contained in Article 243-U, it is clear that the period of five years fixed thereunder to constitute the Municipality is mandatory in nature and has to be followed in all respects. It is only when the Municipality is dissolved for

any other reason and the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any elections for constituting the Municipality for such period. In our opinion, the entire provision in the Constitution was inserted to see that there should not be any delay in the constitution of the new Municipality every five years and in order to avoid the mischief of delaying the process of election and allowing the nominated bodies to continue, the provisions have been suitably added to the Constitution. In this direction, it is necessary for all the State Governments to recognize the significance of the State Election Commission, which is a constitutional body and it shall abide by the directions of the Commission in the same manner in which it follows the directions of the Election Commission of India during the elections for the Parliament and State Legislatures. In fact, in the domain of elections to the Panchayats and the Municipal bodies under the Part IX and Part IX A for the conduct of the elections to these bodies they enjoy the same status as the Election Commission of India.”

28. The mandate of the Constitution as regards the elections to various bodies, including the Municipal Corporations, cannot be allowed to be put on hold, without any justifiable and reasonable ground. Since the grounds on which the elections have been deferred are unjustified and unreasonable and the very fact that it has been deferred for 18 long days, adds irrationality to it. As noticed above, we have given the respondents patient hearing and sufficient opportunity to rectify the said wrong, but to no avail. We, thus, hold that the impugned order is totally unreasonable, unjustified and arbitrary.

29. Consequently, we quash the impugned order dated 18.01.2024 (Annexure P.6 in CWP-1350-2024) and issue the following directions:-

- i) The respondents-authorities shall conduct the elections to the posts of Mayor; Senior Deputy Mayor and Deputy Mayor of the Municipal Corporation, Chandigarh, on 30.01.2024 at 10 a.m. at the scheduled place as indicated in the order dated 10.01.2024 (Annexure P.1 in CWP-1350-2024).
- ii) The Prescribed Authority, shall ensure that the scheduled elections, are held under the Presiding Officer, as may be nominated by the said Authority. The official respondents shall remain bound by their statements made before the Coordinate Bench of this Court on 17.01.2024 in CWP-1201-2024, to ensure conduct of free and fair elections.
- iii) The Councillors, who would come for voting in the aforesaid elections, shall not be accompanied by any supporters or by the security personnel belonging to any other State.
- iv) The Chandigarh Police, shall ensure to provide adequate security to the Councillors, who would come for voting, in view of the fact that they will not be accompanied by any security personnel belonging to any other State.
- v) The Chandigarh Police shall also ensure that neither any rukus nor any untoward incident takes

place in or around the premises of the Chandigarh
Municipal Corporation Office, prior to, during or after
the election process.

30. In view of the above, CWP-1350-2024 is allowed in
the above terms, whereas CWP-1260-2024 is disposed of as
having been rendered infructuous as no substantive relief could
be granted to the petitioner as the date of elections was
postponed and the order was issued to that effect, during the
pendency of the said writ petition i.e. CWP-1260-2024.

31. No other argument has been raised.

32. All pending applications(s), if any, shall also stand
disposed of.

(SUDHIR SINGH)
JUDGE

(HARSH BUNGER)
JUDGE

24.01.2024
ds

Whether Speaking/ Reasoned:	Yes/ No
Whether Reportable:	Yes/ No