

2024:PHHC:027556-DB

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

CWP-4666-2024
Date of decision: 27.02.2024

Gurpreet Singh and anotherPetitioners

Versus

Union Territory of Chandigarh and othersRespondents

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

Present: Mr. Sanjay Kaushal, Senior Advocate with
Mr. Rajiv Sharma, Advocate,
Mr. Karambir Singh, Advocate,
Mr. Manoj Gujral, Advocate, and
Mr. Ankit Rana, Advocate, for the petitioners.

Mr. Anil Mehta, Senior Standing Counsel, U.T.,
Chandigarh, along with Mr. Sanjiv Ghai, Advocate,
Mr. Sumeet Jain, Advocate, Addl. Standing Counsel and
Mr. Parminder Singh Kaul, Advocate, for
respondents No. 1 and 2.

Mr. Chetan Mittal, Senior Advocate with
Mr. Prateek Gupta, Advocate, for respondents No. 3 & 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.

Mr. Gurminder Singh, Senior Advocate, with
Mr. Ferry Sofat, Advocate,
Mr. RPS Bara, Advocate and
Mr. K.S. Kharbanda, Advocate, for respondent No.10.

SUDHIR SINGH, J.

The petitioners have filed the present writ petition for
issuance of a writ in the nature of Certiorari for quashing and
setting aside of the notice dated 23.02.2024 (Annexure P.5)
issued by respondent No.2, for holding the elections to the posts

of Senior Deputy Mayor and Deputy Mayor of the Municipal Corporation, Chandigarh, on 27.02.2024.

2. Briefly, the petitioners herein are the elected councillors of the Chandigarh Municipal Corporation, for a five years' term (December, 2021-December, 2025). Petitioner No.1 (Gurpreet Singh) is a candidate for election to the post of Senior Deputy Mayor, whereas petitioner No.2 (Nirmla Devi) had filed her nomination to contest for the post of Deputy Mayor.

It is apposite to state here that respondent Nos. 8 and 9 are stated to be the rival candidates for the posts of Senior Deputy Mayor and Deputy Mayor, respectively.

3. The elections to the posts of Mayor, Senior Deputy Mayor as well as Deputy Mayor were held on 30.01.2024, in terms of the order dated 24.01.2024 passed by this Court in CWP-1260-2024, wherein the following directions were issued:-

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 ruckus 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.”

4. In pursuance of the aforesaid directions issued vide order dated 24.01.2024, the elections to the posts of Mayor, Senior Deputy Mayor and Deputy Mayor, were held on 30.01.2024, wherein respondent No. 7 herein (Manoj Kumar Sonkar) was elected as Mayor. There was a walk out by certain councillors at the time of conduct of elections in respect to the posts of Senior Deputy Mayor and Deputy Mayor, which was presided over by respondent No.7.

5. Respondent No.10 herein (Kuldeep Kumar), challenged the election results for the post of Mayor by claiming that the presiding officer, had wrongly rejected certain votes being invalid, by CWP-2169-2024, wherein notice of motion was issued and the parties were called upon to submit their respective responses.

6. In the meantime, respondent No.10 filed SLP(C) 2998 of 2024 before the Hon'ble Supreme Court of India, wherein leave was granted and the petition was registered as Civil Appeal No. 2874 of 2024. The aforesaid Civil Appeal came to be allowed by the Hon'ble Supreme Court on 20.02.2024. The extracts from the said order would read as under:-

“39. We accordingly order and direct that the result of the election as declared by the Presiding Officer shall stand quashed and set aside. The appellant, Kuldeep Kumar, is declared to be the validly elected candidate for election as Mayor of the Chandigarh Municipal Corporation.

40. Further, we are of the considered view that a fit and proper case is made out for invoking the jurisdiction of this Court under Section 340 of the Code of Criminal Procedure 1973 in respect of the conduct of Shri Anil Masih, the Presiding Officer. In paragraph 2 of the order dated 19 February 2024, we have recorded the statement which was made by the Presiding Officer when he appeared personally before this Court. As Presiding Officer, Shri Anil Masih could not have been unmindful of the consequences of making a statement which, prima facie, appears to be false to his knowledge in the course of judicial proceedings.

41. The Registrar (Judicial) is accordingly directed to issue a notice to show cause to Shri Anil Masih of the Chandigarh Municipal Corporation who was the Presiding Officer at the election which took place on 30 January 2024, as to why steps should not be initiated against him under Section 340 of the Code of Criminal Procedure 1973. The notice shall be made returnable on 15 March 2024.

42. Shri Anil Masih shall have an opportunity to file his response to the notice to be issued in pursuance of the above directions in the meantime.

43. The ballots and the video footage which were unsealed for the perusal of the Court shall be sealed again and returned to the OSD (Litigation) of the High Court of Punjab and Haryana for safekeeping before the Registrar General of the High Court. This shall be subject to further orders of the competent court.

44. The other elections which are required to be held in terms of the regulations shall now take place in accordance with law,

save and except for the election of the Mayor which has been resolved by the final directions which have been issued herein-above.

xx xx xx

46. The writ petition before the High Court shall stand disposed of in terms of the above directions.”

7. It appears that in pursuance of the aforesaid directions issued by the Hon’ble Supreme Court, the Office of Deputy Commissioner, U.T., Chandigarh, being the prescribed authority, issued a notice dated 23.02.2024 (Annexure P.5), directing that the meeting as per Regulation 3(1) of the Chandigarh Municipal Corporation (Procedure and Conduct of Business) Regulations, 1996 (in short ‘1996 Regulations’) be convened on 27.02.2024 (Tuesday) at 10 a.m. i.e. today, at Assembly Hall of the Chandigarh Municipal Corporation, Chandigarh, for holding the elections. Further, respondent No.10 (Kuldeep Kumar), who has been declared to be the Mayor by virtue of the order dated 20.02.2024 passed by the Hon’ble Supreme Court, was stated to be the Presiding Authority in terms of the 1996 Regulations, which envisage that the elected Mayor shall preside over the meeting for holding of elections to the posts of Senior Deputy Mayor and Deputy Mayor.

8. Today, the instant writ petition has come up for hearing. In the writ petition, the petitioners have prayed, inter-alia, for setting aside the notice dated 23.02.2024 (Annexure P.5) issued by the Deputy Commissioner, U.T., Chandigarh (Prescribed Authority) by alleging the same to be contrary to the provisions of 1996 Regulations. A further prayer has been made by the petitioners for directing respondent No.2 (Deputy

Commissioner, U.T., Chandigarh) and respondent No.10 (newly elected Mayor) to hold fresh elections to the posts of Senior Deputy Mayor and Deputy Mayor, in a transparent and fair manner as per the prescribed procedure provided under the 1996 Regulations.

9. In pursuance of the advance copies having been served upon the respondents in the writ petition Mr. Anil Mehta, Senior Standing Counsel, U.T., Chandigarh along with Mr. Sanjiv Ghai and Mr. Sumeet Jain, Advocates, appears for respondent Nos. 1 and 2; Mr. Chetan Mittal, Senior Advocate with Mr. Prateek Gupta, Advocate, appears for respondent Nos. 3 and 4 and Mr. Manish Bansal, P.P., U.T., Chandigarh along with Mr. Rajeev Anand, APP, U.T., Chandigarh and Mr. Navjit Singh, Advocate, appear for respondent Nos. 5 and 6. Mr. Gurminder Singh, Senior Advocate, with Mr. Ferry Sofat, Advocate, Mr. RPS Bara, Advocate, and Mr. K.S. Kharbanda, Advocate, has appeared for respondent No.10. They, accordingly, accept notices on behalf of the said respondents.

10. During the course of hearing of the instant petition, the learned counsel appearing for U.T., Chandigarh and Municipal Corporation Chandigarh, respectively, have informed that respondent No.10 (newly elected Mayor) has not come forward to assume the charge of the office of the Mayor and in his absence, the elections to the posts of Senior Deputy Mayor and Deputy Mayor, fixed for today, could not take place. It has further been informed that respondent No.10 has also submitted a representation dated 27.02.2024 to respondent No.2 herein,

seeking clarification regarding the conduct of elections for the posts of Senior Deputy Mayor and Deputy Mayor, Municipal Corporation, U.T., Chandigarh, indicating that Regulation 6 includes the whole election process from nomination to the counting of votes and therefore, as per the judgment passed by the Hon'ble Supreme Court, the entire election process for the posts of Senior Deputy Mayor and Deputy Mayor has to be initiated afresh.

11. Although some arguments were raised from both the sides as regards the process to be followed for holding the elections to the posts of Senior Deputy Mayor and Deputy Mayor; wherein learned Senior Counsel appearing for the petitioners argued that the entire process has to be conducted afresh i.e. starting from filing of fresh nomination for the posts of Senior Deputy Mayor and Deputy Mayor; whereas on the other hand, the stand of the official respondents has been that the process of nomination to the posts of Senior Deputy Mayor and Deputy Mayor, having already been concluded and finalized in terms of the order dated 17.01.2024 passed in CWP-1201-2024 and, accordingly, the impugned notice (Annexure P.5) has been issued, considering the said nomination to be final and only the voting by way of secret ballot is to be carried out and the declaration of the result is to follow.

12. During the course of hearing, learned counsel appearing for the U.T., Chandigarh as well as Municipal Corporation, U.T., Chandigarh, have fairly stated that in order to obviate any apprehension of the councillors/candidates and to

maintain the purity of elections and also to maintain the legitimacy of and trust in representative democracy, the entire process of elections starting from calling fresh nominations for the posts of Senior Deputy Mayor and Deputy Mayor, shall be carried out by virtue of a fresh notification/notice, in accordance with law. However, it is stated that since the newly elected Mayor is to preside over the above referred elections, an appropriate direction be issued to him to assume charge of his office, within a period of 24 hours, so that the further course of proceedings for holding elections to the posts of Senior Deputy Mayor and Deputy Mayor, can be carried out in compliance with the direction issued by the Hon'ble Supreme Court of India.

13. Learned Senior Counsel appearing for the petitioners has not raised any objection to the said course of action. Similarly, respondent No.10 (newly elected Mayor), who is also represented by Mr. Gurminder Singh, Senior Advocate, has also not raised any objection to the aforesaid course of action and has further given an undertaking that respondent No.10 would assume charge of the Mayor, Municipal Corporation, Chandigarh, by 10:00 a.m. on 28.02.2024 at the Office of Municipal Corporation, Chandigarh.

14. In view of the aforesaid stand taken by the respective parties, the learned counsel appearing for respondent No.2 (Deputy Commissioner, U.T., Chandigarh), has handed over a copy of a fresh notice bearing No. DC/MA/MCC/2024/4406-07 dated 27.02.2024, which is taken on record, subject to all just

exceptions. The relevant extracts of the aforesaid notice dated 27.02.2024, read as under:-

“Office of The Deputy Commissioner, U.T., Chandigarh

Notice

(Under Sections 60 and 38 of the Punjab Municipal Corporation Act, 1976 as applicable to U.T., Chandigarh read with Regulation 3(1), 6, 7 and 8 of the Chandigarh Municipal Corporation (Procedure & Conduct of Business) Regulations, 1996.

DC/MA/MCC/2024/4406-07 Dated 27.02.2024

In pursuance to the Judgment and directions passed by the Hon'ble Supreme Court of India in Civil Appeal No. 2874 of 2024 and SLP (Civil) No. 2998/2024 dated 20.02.2024 and in CWP No. 1260-2024, CWP No. 1350-2024 and CWP No. 2878-2024 before the Hon'ble Punjab and Haryana High Court at Chandigarh and by withdrawing order no. DC/MA/MCC/2024/4220-21 dated 23.02.2024, the following order is hereby being issued:-

1. Whereas, Section 38 of the Punjab Municipal Act, 1976 as extended to Union Territory, Chandigarh by the Punjab Municipal Corporation Law (Extension to Chandigarh) Act, 1997 (Act No. 45 of 1994) provides that the Corporation shall, at its first meeting in each year elect one of its elected members to be the Chairperson to be known as the Mayor and other two such members to be the Senior Deputy Mayor and Deputy Mayor of the Corporation.
2. And whereas, the Hon'ble Supreme Court has declared Sh. Kuldeep Kumar as Mayor of Municipal Corporation, Chandigarh vide Order dated 20.02.2024 as mentioned above.

3. And whereas, the Regulation 3(1) of the Chandigarh Municipal Corporation (Procedure and Conduct of Business) Regulations, 1996 provides that the date time and place of meeting for the election of the Mayor, Senior Deputy Mayor and Deputy Mayor, after general elections, shall be determined by the Prescribed Authority.

4. And whereas, the Department of Local Government, Chandigarh Administration vide its notification No. 5620-UTFI(4)/13157 dated 04.10.1994 has designated the Deputy Commissioner, Union Territory, Chandigarh as the “Prescribed Authority” for the purpose.

5. And whereas, the Regulation 8 of the Chandigarh Municipal Corporation (Procedure and Conduct of Business) Regulations, 1996, provides as under:-

“Election of Senior Deputy Mayor and Deputy Mayor:- The provisions of Regulation 6 shall apply as far may be to the election of Senior Deputy Mayor and Deputy Mayor subject to the modification that any reference therein to the presiding authority shall be construed as a reference to the Mayor.”

6. And whereas, the Regulation 7 of the Chandigarh Municipal Corporation (Procedure and Conduct of Business) Regulations, 1996, provides as under:-

“Mayor to Preside over the rest of Meeting: - as soon as the Mayor is elected he/she shall preside over the meeting for the transaction of the rest of the business thereof.”

7. Now, therefore, in exercise of powers conferred upon me vide aforementioned notification No. 5620-UTFI(4)/13157 dated 04.10.1994, in capacity of Prescribed Authority, I hereby direct that the meeting as per Regulation 3(1) of the Chandigarh

Municipal Corporation (Procedure and Conduct of Business) Regulations, 1996, shall be convened as under:-

1. Dated : 04.03.2024 (Monday)
2. Time : 10:00 AM
3. Place : Assembly Hall of the
Chandigarh Municipal Corporation.
4. Presiding Authority: Sh. Kuldeep Kumar, Mayor.

Agenda for the meeting will be as under:-

AGENDA: To transact the business under the provision Regulation 3(1) read with Regulations 6, 7 & 8 of the Chandigarh Municipal Corporation (Procedure and Conduct of Business) Regulations, 1996 as applicable to Union Territory of Chandigarh i.e. Election of Senior Deputy Mayor and Deputy Mayor.

8. Notice is also given under Sections 38 & 60 of the Municipal Corporation Act, 1976 as applicable to U.T., Chandigarh read with Sub-Regulation 2 of Regulation 6 of Chandigarh Municipal Corporation (Procedure and Conduct of Business) Regulations, 1996, calling upon the elected Councillors to file nomination in Form No. 1 obtainable from the Secretary, Municipal Corporation, Chandigarh or such other authority as may be identified for this purpose by the Mayor for election as Senior Deputy Mayor and Deputy Mayor and to deliver the same duly signed by the candidate and two other members of the Corporation as proposer and seconder, to Secretary, Municipal Corporation, Chandigarh or such order authority as may be identified for this purpose by the Mayor from 28.02.2024 to 29.02.2024 between the hours of eleven O'clock in the forenoon and five O'clock in the afternoon.

9. The following directions were issued by the Hon'ble Punjab and Haryana High Court in CWP No. 1260-2024 and CWP No. 1350-2024:-

- 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 ruckus 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.”

The Mayor is hereby requested to ensure that elections of Senior Deputy Mayor and Deputy Mayor are conducted as per relevant orders of Hon’ble Supreme court and High Court of Punjab and Haryana, Punjab Municipal Corporation Act, 1976 as applicable to U.T., Chandigarh and Chandigarh Municipal Corporation (Procedure & Conduct of Business) Regulation, 1996.

10. Detailed election programme shall be issued separately by the Secretary, Municipal Corporation, Chandigarh, who is

also requested to make arrangements for conduct of elections as per relevant orders of Hon'ble supreme court and High court of Punjab & Haryana.

Sd/-

**Vinay Pratap Singh, IAS,
Deputy Commissioner,
Chandigarh**

(Prescribed Authority vide Notification No. 5620-UTFI(4)/13157 dated 04.10.1994 issued by the Chandigarh Administration).

15. Considering the aforementioned facts and circumstances, in our considered view, the relief sought for in the instant writ petition, has been rendered infructuous for three reasons, namely; i) the newly elected Mayor has not assumed charge of his office; ii) on account of non-assumption of charge by the newly elected Mayor, the elections scheduled for today in pursuance of the impugned notice dated 23.02.2024 (Annexure P.5) could not be held and iii) respondent No.2 has issued a fresh notice dated 27.02.2024 (as extracted above), indicating the schedule/process of fresh elections to the posts of Senior Deputy Mayor and Deputy Mayor, Municipal Corporation, U.T., Chandigarh.

16. Keeping in view the above discussion and taking note of the fact that the parties have agreed upon the aforesaid process of fresh elections to the posts of Senior Deputy Mayor and Deputy Mayor, Municipal Corporation, Chandigarh, we accordingly, dispose of the present writ petition, with the following directions:-

- i) In view of the undertaking given on behalf of respondent No.10, the newly elected Mayor, shall

assume the charge of his Office by 10 a.m. tomorrow i.e. 28.02.2024 at the Office of Municipal Corporation, Chandigarh;

ii) The newly elected Mayor shall ensure his association with the conduct of the aforesaid elections;

iii) The elections to the posts of Senior Deputy Mayor and Deputy Mayor, be carried out, in accordance with the notice bearing No. DC/MA/MCC /2024/4406-07 Dated 27.02.2024;

iv) The entire process of conduct of the aforesaid elections shall be videographed by the respondent-authorities.

v) 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.

vi) 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.

vii) The Chandigarh Police shall also ensure that neither any ruckus 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.

17. The instant writ petition stands disposed in afore-stated terms.

18. It is clarified that the instant writ petition has been disposed of with the consent of all concerned parties and the same shall not be treated as a precedent, with regard to the legality and/or interpretation of the 1996 Regulations, especially Regulation Nos. 6, 7 and 8 in respect to the election to the posts of Senior Deputy Mayor and Deputy Mayor. The question of legality of the aforesaid 1996 Regulations, is kept open to be considered in an appropriate case.

19. All pending applications, if any, shall also stand disposed of.

(Sudhir Singh)
Judge

(Harsh Bunger)
Judge

27.02.2024
Mahavir/ ds

-	<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
-	<i>Whether reportable:</i>	<i>Yes/No</i>