

Kuldeep Kumar
v.
U.T. Chandigarh and Others

(Civil Appeal No. 2874 of 2024)

20 February 2024

[Dr Dhananjaya Y Chandrachud, CJI,*
J B Pardiwala and Manoj Misra, JJ.]

Issue for Consideration

Result of the election to the post of Mayor at the Chandigarh Municipal Corporation declared by the Presiding Officer in favour of the eighth respondent, if was contrary to law in view of the alleged electoral malpractices by him during the counting of votes.

Headnotes

Punjab Municipal Corporation Act, 1976 – Punjab Municipal Corporation Law (Extension to Chandigarh) Act, 1994 – Chandigarh Municipal Corporation (Procedure and Conduct of Business) Regulations, 1996 – Regulation 6, Clauses (9) to (13) – Election to the post of Mayor at the Chandigarh Municipal Corporation – Alleged electoral malpractices by the Presiding Officer (Respondent no.7) during the counting of votes – 36 votes were polled, of which 8 ballot papers were treated to be invalid by the Presiding Officer – Of the remaining 28 valid votes, the appellant (candidate of an alliance between the Aam Aadmi Party and the Indian National Congress) secured twelve votes, while the eighth respondent (a candidate of the Bharatiya Janta Party) secured sixteen votes – Result of the election was declared in favour of the eighth respondent – Correctness:

Held: It is evident from the physical inspection of the eight ballots that in each of those cases, the vote was duly cast in favour of the appellant – The Presiding Officer placed a line in ink by way of a mark at the bottom half of each of the ballots which were treated to be invalid – He had evidently put his own aforesaid mark to create a ground for treating the ballot to have been invalidly cast – In doing so, the Presiding Officer clearly acted beyond

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the terms of his remit under the statutory regulations – These regulations have been framed by the Municipal Corporation in exercise of powers conferred by s.65 of the 1976 Act as extended to the Union Territory of Chandigarh – Clause (10) of Regulation 6 provides for three eventualities in which a ballot can be treated as invalid – None of the said eventualities were fulfilled in the present case – The vote was cast by placing a rubber stamp on the upper half of the ballot and hence the ink mark which was placed on the bottom half by the Presiding Officer would be of no consequence – Presiding Officer made a deliberate effort to deface the eight ballots cast in favour of the appellant so as to secure a result at the election by which the eighth respondent would be declared as the elected candidate – Result which was declared by the Presiding Officer being contrary to law is quashed and set aside – Appellant is declared to be the validly elected candidate for election as Mayor of the Chandigarh Municipal Corporation. [Paras 26-31, 39]

Constitution of India – Article 142 – Exercise of powers under – Free and fair elections – Election to the post of Mayor at the Chandigarh Municipal Corporation – Writ petition filed by the appellant before the High Court alleging electoral malpractices by the Presiding Officer during the counting of votes, sought the setting aside of the election process and for the holding of a fresh election process – High Court declined to stay the result of the election declared in favour of the eighth respondent – During the course of proceedings before this Court, the eighth respondent who was elected as Mayor tendered his resignation:

Held: It would be inappropriate to set aside the election process in its entirety when the only infirmity which has been found is at the stage when the counting of votes was recorded by the Presiding Officer – Allowing the entire election process to be set aside would further compound the destruction of fundamental democratic principles which has taken place as a consequence of the conduct of the Presiding Officer – Free and fair elections are a part of the basic structure of the Constitution – Elections at the local participatory level act as a microcosm of the larger democratic structure in the country – Local governments, such as municipal corporations, engage with issues that affect citizens' daily lives and act as a primary point of contact with

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representative democracy – Ensuring a free and fair electoral process throughout this process, therefore, is imperative to maintain the legitimacy of and trust in representative democracy – In such a case, this Court is duty-bound, particularly in the context of its jurisdiction u/Article 142, to do complete justice to ensure that the process of electoral democracy is not allowed to be thwarted by such subterfuges – This Court must step in in such an exceptional situation to ensure that the basic mandate of electoral democracy at the local participatory level is preserved – Pertinently, this is not an ordinary case of alleged malpractice by candidates in an election, but electoral misconduct by the presiding officer himself – The brazen nature of the malpractice, visible on camera, makes the situation all the more extraordinary, justifying the invocation of the power of this Court u/Article 142. [Paras 36, 37]

Code of Criminal Procedure, 1973 – s.340 – Exercise of jurisdiction under – Election to the post of Mayor at the Chandigarh Municipal Corporation – Alleged electoral malpractices by the Presiding Officer during the counting of votes – Presiding Officer signed each of the ballot papers however, the video footage indicated that he had also placed certain marks on some of the ballot papers – During the course of the hearing, the Presiding Officer made a solemn statement before this Court that he did so because he found that the ballots had been defaced:

Held: The ballots had not been defaced when the Presiding Officer put his mark at the bottom – The ballots left no manner of doubt about the candidate for whom the ballot was cast – Presiding Officer is guilty of a serious misdemeanour in doing what he did in his role and capacity as Presiding Officer – A fit and proper case is made out for invoking the jurisdiction of this Court u/s.340 in respect of the conduct of the Presiding Officer – In the order dated 19.02.2024, the statement made by the Presiding Officer was recorded when he appeared personally before this Court – As Presiding Officer, he 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 – Notice to be issued to show cause to the Presiding Officer, as to why steps should not be initiated against him u/s.340. [Paras 30, 40]

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Case Law Cited

Kihoto Hollohon v. Zachilhu and Ors., [\[1992\] 1 SCR 686](#) : **AIR 1993 SC 412**; *Indira Nehru Gandhi v. Raj Narain*, [\[1976\] 2 SCR 347](#) : (1975) **Supp SCC 1**; *Mohinder Singh Gill v. Chief Election Commissioner*, [\[1978\] 2 SCR 272](#) : (1978) **1 SCC 405** – followed.

List of Acts

Punjab Municipal Corporation Act, 1976; Punjab Municipal Corporation Law (Extension to Chandigarh) Act, 1994; Chandigarh Municipal Corporation (Procedure and Conduct of Business) Regulations, 1996; Code of Criminal Procedure, 1973; Constitution of India.

List of Keywords

Election; Mayor; Chandigarh Municipal Corporation; Electoral malpractices by Presiding Officer; Counting of votes; Defacing ballots; Free and fair elections; Fundamental democratic principles; Basic structure of the Constitution; Elections at local participatory level; Local governments, Municipal corporations; Representative democracy; Statement false to the knowledge; Complete justice.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No.2874 of 2024

From the Judgment and Order dated 31.01.2024 of the High Court of Punjab & Haryana at Chandigarh in CWP No.2169 of 2024

Appearances for Parties

Dr. Abhishek Manu Singhvi, Gurminder Singh, Sr. Advs., Shadan Farasat, Talha Abdul Rahman, Amit Bhandari, Siddharth Seem, Abhishek Babbar, Harshit Anand, M. Shaz Khan, Adnan Yousuf, Ramanpreet Bara, Ferry Sofat, R.P.S. Bara, Karamanbir Singh, Advs. for the Appellant.

Tushar Mehta, SG., Maninder Singh, Mukul Rohatgi, Adundhamauli Prasad, Sr. Advs., Ms. Bansuri Swaraj, Siddhesh Shirish Kotwal, Prateek Gupta, Varun Chugh, Ms. Ana Upadhyay, Ms. Manya Hasija, Tejasvi Gupta, Pawan Upadhyay, T. Illayarasu, Ms. Ashita Chawla, Ajay Sabharwal, Rangasaran Mohan, Amarpal Singh Dua, Raghunatha Sethupathy B., Mutu Thangadurai, Ms. Misha Rohatgi, Advs. for the Respondents.

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1. Leave granted.
2. The present appeal arises from an interim order of a Division Bench of the High Court of Punjab & Haryana¹ dated 31 January 2024. The order impugned originates in a writ petition alleging electoral malpractices by the presiding officer who conducted the election to the post of Mayor at the Chandigarh Municipal Corporation. The High Court issued notice and listed the petition after three weeks, but it declined to stay the result of the election or grant any other interim relief. The appellant approached this Court assailing the Order and raised serious allegations about the sanctity of the election. With the course the proceedings have taken, this judgment will result in a final order on the writ petition before the High Court.
3. Section 38 of the Punjab Municipal Corporation Act 1976², extended to the Union Territory of Chandigarh by the Punjab Municipal Corporation Law (Extension to Chandigarh) Act 1994³, provides that the Chandigarh Municipal Corporation shall, at its first meeting in each year, elect one of its elected members to be the Mayor of the Corporation. Section 60(a) of the Act provides that the meeting for the election of the Mayor shall be convened by the 'Divisional Commissioner', who shall nominate a councillor who is not a candidate for the election, to preside over the meeting. Similarly, Regulation 6(1) of the Chandigarh Municipal Corporation (Procedure and Conduct of Business) Regulations 1996⁴ provides that a meeting for the election of a Mayor shall be convened by the 'prescribed authority' who shall nominate a Councillor who is not a candidate to preside over the meeting. The Deputy Commissioner of the Union Territory of Chandigarh has been designated as Presiding Authority for this purpose by a Notification dated 4 October 1994.

1 "High Court"

2 "Act"

3 Act No 45 of 1994

4 "Regulations"

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4. On 10 January 2024, Shri Vinay Pratap Singh, IAS, Deputy Commissioner, Union Territory of Chandigarh acting in his capacity as the Prescribed Authority directed the convening of a meeting of the Councillors in terms of Section 38 of the Act at 11 am on 18 January 2024. The seventh respondent, Shri Anil Masih, one of the councillors who was not standing for the mayor election was nominated as the presiding authority. The agenda of the meeting was to conduct the election of Mayor, Senior Deputy Mayor, and Deputy Mayor of the Corporation and the elected Councillors desirous of contesting the election were called upon to file their nominations for the posts.
5. A writ petition under Article 226 of the Constitution was instituted by the appellant in the High Court seeking a direction to the Deputy Commissioner to ensure that free and fair elections take place for the posts of Mayor, Senior Deputy Mayor and Deputy Mayor of the Municipal Corporation which were scheduled to be held on 18 January 2024 and for the appointment of a commissioner under the auspices of the High Court to supervise the election process.
6. During the course of hearing the appeal, the appellant submitted that he would be content if the petition was disposed of with directions to the official respondents to (a) acknowledge the acceptance of the withdrawal of the candidature of certain individuals for the three electoral posts; (b) permit persons nominated by the contested candidates to observe the proceedings of the elections; and (c) video record the entire election process.
7. In response to the above submission, it was stated on behalf of the respondents representing the various authorities, *inter alia*, that the entire voting and election process would be video recorded. Likewise, it was stated that the Chandigarh police would ensure that free and fair elections take place. In view of the position adopted by the authorities, by an Order dated 17 January 2024 (a day before the proposed election), the petition was disposed of by a Division Bench of the High Court.
8. Elections were not conducted on 18 January 2024, resulting in a fresh round of litigation before the High Court. The order dated 18 January 2024 postponing the elections and rescheduling them to 6 February 2024 was challenged before the High Court. The election allegedly could not take place as Shri Anil Masih, the presiding officer, had taken leave of absence on the ground of ill health and due to the purported 'law and order' situation in Chandigarh.

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9. On 23 January 2024, the High Court observed that the postponement of the elections for a period of eighteen days was unreasonable. By its judgment dated 24 January 2024, the High Court held that there was no valid ground for the postponement of the elections. Consequently, while setting aside the postponement order dated 18 January 2024, the High Court directed that the elections to the posts of Mayor, Senior Deputy Mayor and Deputy Mayor be conducted at 10 am on 30 January 2024. The High Court also issued other directions to ensure free and fair elections, as set out below:
- "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."
10. Pursuant to the above litigation before the High Court, the programme for the elections was notified on 26 January 2024. The election for

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the post of Mayor was conducted on 30 January 2024 with Shri Anil Masih, the seventh respondent, acting as the Presiding Officer. Two candidates were in the fray for the post of Mayor. The appellant, Kuldeep Kumar, was a candidate fielded by an alliance between the Aam Aadmi Party and the Indian National Congress. From the submissions before the Court, it appears that the alliance came into being after nominations were filed on 16 January 2024, after which certain candidates had withdrawn their nominations, as recorded by the High Court in one of its earlier orders. The second candidate, Manoj Kumar Sonkar, the eighth respondent was a candidate set up by the Bharatiya Janta Party. Thirty-five councillors were eligible to vote at the election of the Mayor apart from which, the Member of Parliament from the Union Territory of Chandigarh was also eligible to cast a vote at the election. There were therefore thirty-six eligible voters for the election.

11. The results were announced by the Presiding Officer on 30 January 2024. The result sheet which tabulated the outcome is reproduced below:

“MUNICIPAL CORPORATION CHANDIGARH

ELECTION OF MAYOR

RESULT SHEET

Sr. No.	Name of the Councillors	Vote Polled
1.	Sh. Kuldeep Kumar	12
2.	Sh. Manoj Kumar	16
NUMBER OF VALID VOTES POLLED:		28
NUMBER OF INVALID VOTES POLLED:		08
TOTAL VOTES POLLED:		36

SIGNATURE OF PRESIDING OFFICER

I, Anil Masih, Presiding Officer, declare Sh. Manoj Kumar having been elected as Mayor, Municipal Corporation Chandigarh for the year 2024.

Dated: 30.01.2024

PRESIDING OFFICER”

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12. The result sheet indicates that thirty-six votes were polled, of which eight were treated to be invalid. Of the twenty-eight valid votes which remained, the appellant polled twelve votes, while the eighth respondent polled sixteen votes. The Presiding Officer declared the result of the election in favour of the eighth respondent. As directed by the High Court, the election process, including the counting of votes was video recorded.
13. Alleging electoral malpractices by the presiding officer/seventh respondent during the counting of votes, the appellant instituted a writ petition before the High Court of Punjab & Haryana. A Division Bench of the High Court declined to stay the result of the election and directed that the petition be posted after three weeks. The proceedings before this Court were instituted at this stage assailing the interim order of the High Court.
14. On 5 February 2024, the video recording of the counting process was played in open court. This Court passed the following order:
 - "1. Issue notice.
 2. Pursuant to the interim order of the High Court in an earlier writ petition, the proceedings for conducting the election to the Post of Mayor of the Chandigarh Municipal Corporation were videographed. During the course of the hearing, the video has been played in Court.
 3. The Returning Officer shall remain present before this Court on the next date of listing to explain his conduct as it appears in the video.
 4. *Prima facie*, at this stage, we are of the considered view that an appropriate interim order was warranted, which the High Court has failed to pass, in order to protect the purity and sanctity of the electoral process.
 5. We direct that the entire record pertaining to the election of the Mayor of the Chandigarh Municipal Corporation shall be sequestered under the custody of the Registrar General of the High Court of Punjab and Haryana. This shall include:

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- (i) The ballot papers;
 - (ii) Videography of the entire electoral process; and
 - (iii) All other material in the custody of the Returning Officer.
 6. This exercise shall be carried out forthwith by 5 pm this evening.
 7. Mr Tushar Mehta, Solicitor General appearing on behalf of the Returning Officer, states that the Returning Officer has handed over the entire record in a sealed format to the Deputy Commissioner, UT Chandigarh on 30 January 2024.
 8. The Deputy Commissioner, UT Chandigarh, shall comply with the above direction by handing over the entirety of the record to the Registrar General of the High Court of Punjab and Haryana for safe keeping and custody.
 9. The ensuing meeting of the Chandigarh Municipal Corporation, which is to take place on 7 February 2024, shall stand deferred, pending further orders of this Court.
 10. List the Special Leave Petition on 19 February 2024.”
15. On 19 February 2024, when the proceedings were listed before this Court again, the following order was passed:
- "1. Mr Gurminder Singh, senior counsel apprised the Court that in pursuance of the interim order dated 05 February 2024, the ballot papers have been sequestered under the custody of the Registrar General of the High Court of Punjab and Haryana on 05 February 2024.
 2. During the course of the hearing, the Returning Officer Mr Anil Masih is present before this Court. Responding to a query of the Court, Mr Masih stated that he had, besides signing the ballot papers, put his mark at eight ballot papers during the course of the counting of the votes. He states that he did so as he found that the ballot papers were defaced.

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3. We direct that the ballot papers which have been placed in the custody of the Registrar General be produced before this Court at 2.00 pm on 20 February 2024 by a judicial officer to be nominated by the Registrar General for the purpose of transporting the ballot papers to this Court.
 4. Proper security arrangements shall be made to ensure the safe transit of the judicial officer nominated by the Registrar General in pursuance of this Order. Arrangements shall also be made to secure proper preservation and custody of the ballot papers with the judicial officer.
 5. The judicial officer shall also produce the entire video of the counting of the votes before the Returning Officer which took place on 30 January 2024.
 6. List the Special Leave Petition at 2.00 pm on 20 February 2024.”
16. In pursuance of the above directions, the entire record pertaining to the election of the Mayor was sequestered under the custody of the Registrar General of the High Court, including (i) the ballot papers; (ii) the video footage of the electoral process; and (iii) all material in the custody of the Returning Officer/Presiding Officer. Pursuant to the order dated 19 February 2024, the entire record has been produced before this Court in sealed and secure custody by Shri Varun Nagpal, OSD (Litigation) of the High Court of Punjab & Haryana.
 17. On 5 February 2024, during the course of the hearing, parts of the video footage recorded in pursuance of the order of the High Court were played before this Court. The entire video footage has been produced before the Court pursuant to order dated 19 February 2024 and played on the open screens during the hearing.
 18. Elections to the post of Mayor are governed by the provisions of the Chandigarh Municipal Corporation (Procedure and Conduct of Business) Regulations 1996. Regulation 6 provides for election of the Mayor, including the process of nomination, withdrawal of candidatures and the conduct of the election by a secret ballot. Clauses (9) to (13) of Regulation 6 have a material bearing on the subject matter of the present dispute and serve as a yardstick to

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test the actions of the Presiding Officer/seventh respondent. The relevant provisions are reproduced below:

- "(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 the (sic) 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 and 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."
19. In terms of Regulation 6(9), a councillor can vote for only one candidate. While voting, each member has to 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, after which the ballot paper has to be folded and inserted in the ballot box in the presence of the Presiding Officer. Regulation 6(10) stipulates when the ballot paper would be treated as invalid and provides for three eventualities.

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The first is where a member votes for more candidates than one. The second eventuality is where the member places any mark on the paper by which he may be identified. The third eventuality is if the mark indicating the vote is placed on the ballot paper in such a manner as to make it doubtful for which candidate the vote has been cast. Finally, Regulation 6(11) provides that as soon as the period fixed for casting of the votes is over, the presiding authority shall open the ballot box and initial each ballot paper.

20. From the record, it emerges that Shri Anil Masih, the Presiding Officer had signed each of the ballot papers. However, the video footage appears to indicate that he had also placed certain marks on some of the ballot papers. This was corroborated on 19 February 2024, when Shri Anil Masih, the Presiding authority/seventh respondent, who was present before this Court, stated that besides signing the ballot papers, he had placed his mark on eight ballot papers during the counting of the votes. He stated that he did so as he found that the ballot papers were defaced and sought to highlight them.
21. The grievance of the appellant, urged before this Court by Dr Abhishek Manu Singhvi and Mr Gurminder Singh, senior counsel is that the video footage leaves no manner of doubt that the Presiding Officer while initialing the ballot papers placed an ink mark on the lower half of eight ballot papers, all of which were cast in favour of the appellant. It has been urged that the votes were treated as invalid only as a result of the marks which were put by the Presiding Officer. Consequently, it has been submitted that a deliberate effort was made by the Presiding Officer to treat eight of the votes which were cast in favour of the appellant as invalid and to declare the eighth respondent as the elected candidate on the basis that he had secured sixteen votes. Hence, it has been submitted that the electoral process has been vitiated by the misconduct of the presiding authority, as a consequence of which the democratic process leading up to the election of the Mayor of the Chandigarh Municipal Corporation has been seriously impaired.
22. Mr Mukul Rohatgi, senior counsel appeared on behalf of the Presiding Officer/seventh respondent and urged that the entire process of the election was not only video recorded but both the contesting candidates and their representatives were present in the assembly hall where the counting took place. Mr Rohatgi further submitted that

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apart from initialing the ballot papers, the Presiding Officer placed certain marks in the bottom half of the eight ballots which were treated as invalid based on his assessment that these ballots had already been defaced.

23. Mr Maninder Singh, senior counsel appearing on behalf of the eighth respondent submitted that the relief sought by the appellant in the underlying writ petition before the High Court is for setting aside the result of the election and for the conduct of a fresh election. During the pendency of these proceedings, the eighth respondent has tendered his resignation and hence, it has been submitted that a fresh election would have to be held in terms of the provisions of Section 38(3) of the Act.
24. Mr Tushar Mehta, Solicitor General appeared for the Union Territory of Chandigarh and clarified that he is not representing the Presiding Officer/seventh respondent in these proceedings.
25. As stated above, Regulation 6(9) indicates that 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 the member wishes to vote. The ballot paper is then folded and placed in the ballot box. The entire record (including the ballots in question) has been produced before this Court in secure custody.
26. The entirety of the dispute turns on the eight ballot papers which were treated to be invalid by the Presiding Officer. We have perused the ballot papers in question. All the ballot papers contain the name of the appellant in the upper half and the name of the eighth respondent in the lower half. Below the names of the candidates is the signature of the Presiding Officer. After the ballots are cast, the Presiding Officer is required to initial each ballot in terms of Regulation 6(11). Each of the ballot papers bears two signatures of the Presiding Officer. It is evident from the physical inspection of the eight ballots which were treated to be invalid that in each of those cases, the vote was cast by the member in favour of the appellant. The Presiding Officer has placed a line in ink by way of a mark at the bottom half of each of the ballots which have been treated to be invalid. During the course of the hearing yesterday, the Presiding Officer informed this Court that he did so because he found that the ballots had been defaced. Before recording the statement of the Presiding Officer in the above terms, we had placed him on notice of the serious consequences

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which are liable to ensue if he was found to have made a statement before this Court which was incorrect.

27. The eight ballots which have been perused before the Court have also been perused by the counsel appearing on behalf of the appellant and for the successful candidate among others. It is evident that in each of the eight ballots, the vote had been duly cast in favour of the appellant. Further, the Presiding Officer has evidently put his own mark on the bottom half of the ballots to create a ground for treating the ballot to have been invalidly cast.
28. In doing so, the Presiding Officer has clearly acted beyond the terms of his remit under the statutory regulations. These regulations have been framed by the Municipal Corporation in exercise of powers conferred by Section 65 of the Act as extended to the Union Territory of Chandigarh. Clause (10) of Regulation 6 provides for three eventualities, as already noticed earlier, in which a ballot can be treated as invalid, namely:
 - (i) Where a member has voted for more than one candidate;
 - (ii) Where a member places any mark on the paper by which he may be identified; and
 - (iii) If the mark indicating the vote is placed on the ballot paper in such a manner as to make it doubtful over which candidate the vote has been cast.
29. None of the above eventualities are fulfilled in the present case.
30. There is absolutely no dispute about the factual position that in each of the eight ballots the vote was cast for one person which is evident from the rubber stamp appearing on the upper half of the ballot in each of those cases. Likewise, there is no mark on the ballot which would indicate that the person who cast the vote would be identified. The third ground which evinces a situation where the mark is placed in such a manner so as to make it doubtful for which candidate the vote has been cast would not arise on a plain perusal of the ballots. Even if the mark which was placed by the Presiding Officer is taken into consideration, that mark does not create any doubt about the candidate in favour of whom the vote was cast. The vote was cast by placing a rubber stamp on the upper half of the ballot and hence the ink mark which was placed on the bottom half by the Presiding Officer would be of no consequence. The ballots had not been

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defaced when the Presiding Officer put his mark at the bottom. The ballots left no manner of doubt about the candidate for whom the ballot was cast. But that apart, it is evident that the Presiding Officer is guilty of a serious misdemeanour in doing what he did in his role and capacity as Presiding Officer.

31. As stated above, Regulation 6(1) requires the nomination of a councillor who is not a candidate at the election to preside over the meeting. This provision has been made to ensure that the person who acts as Presiding Officer would do so with objectivity. It is evident that the Presiding Officer in the present case has made a deliberate effort to deface the eight ballots which were cast in favour of the appellant so as to secure a result at the election by which the eighth respondent would be declared as the elected candidate.
32. Before this Court yesterday, the Presiding Officer made a solemn statement that he had done so because he found that each of the eight ballots was defaced. It is evident that none of the ballots had been defaced. As a matter of fact, it is also material to note that after the votes are cast, the ballot is folded in a vertical manner to ensure that if the ink on the rubber stamp appears on the corresponding half of the ballot it will appear alongside the name of the candidate for whom the vote has been cast. The conduct of the Presiding Officer must be deprecated at two levels. Firstly, by his conduct, he has unlawfully altered the course of the Mayor's election. Secondly, in making a solemn statement before this Court on 19 February 2024, the Presiding Officer has expressed a patent falsehood, despite a prior warning, for which he must be held accountable.
33. For the above reasons, we have come to the conclusion that the result, which was declared by Shri Anil Masih, the Presiding Officer is plainly contrary to law and would have to be set aside. We order accordingly.
34. During the course of these proceedings, the eighth respondent who was elected as Mayor has tendered his resignation. Senior counsel appearing on behalf of the eighth respondent has adverted to the provisions of Section 38(3) in terms of which on the occurrence of any casual vacancy, *inter alia*, in the office of the Mayor, the Corporation is required within a month of the occurrence of the vacancy to elect one of its members as Mayor to hold office for the remainder of the term of office of the predecessor.

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35. In the underlying writ petition before the Punjab & Haryana High Court, the appellant had, *inter alia*, sought the setting aside of the election process and for the holding of a fresh election process and consequential reliefs. However, we are of the considered view that it would be inappropriate to set aside the election process in its entirety when the only infirmity which has been found is at the stage when the counting of votes was recorded by the Presiding Officer. Allowing the entire election process to be set aside would further compound the destruction of fundamental democratic principles which has taken place as a consequence of the conduct of the Presiding Officer.
36. This Court has consistently held that free and fair elections are a part of the basic structure of the Constitution.⁵ Elections at the local participatory level act as a microcosm of the larger democratic structure in the country. Local governments, such as municipal corporations, engage with issues that affect citizens' daily lives and act as a primary point of contact with representative democracy. The process of citizens electing councillors, who in turn, elect the Mayor, serves as a channel for ordinary citizens to ventilate their grievances through their representatives – both directly and indirectly elected. Ensuring a free and fair electoral process throughout this process, therefore, is imperative to maintain the legitimacy of and trust in representative democracy.
37. We are of the considered view that in such a case, this Court is duty-bound, particularly in the context of its jurisdiction under Article 142 of the Constitution, to do complete justice to ensure that the process of electoral democracy is not allowed to be thwarted by such subterfuges. Allowing such a state of affairs to take place would be destructive of the most valued principles on which the entire edifice of democracy in our country depends. We are, therefore, of the view that this Court must step in in such an exceptional situation to ensure that the basic mandate of electoral democracy at the local participatory level is preserved. Pertinently, this is not an ordinary case of alleged malpractice by candidates in an election, but electoral misconduct by the presiding officer himself. The brazen nature of the malpractice, visible on camera, makes the situation all the more

⁵ Kihoto Hollohon v. Zachilhu and Ors., [\[1992\] 1 SCR 686](#) : AIR 1993 SC 412; Indira Nehru Gandhi v. Raj Narain, [\[1976\] 2 SCR 347](#) : 1975 Supp SCC 1.

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extraordinary, justifying the invocation of the power of this Court under Article 142.

38. From the result sheet, which has been reproduced in para 11, it has emerged that while the appellant is reflected to have polled twelve votes, eight votes cast in favour of the appellant were treated as invalid. As detailed above, each of those eight invalid votes was in fact validly cast in favour of the appellant. Adding the eight invalid votes to the twelve votes which the Presiding Officer recorded to have been polled by the appellant would make his tally twenty votes. The eighth respondent, on the other hand, has polled sixteen votes.
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

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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.
45. Before concluding, we echo the observations by Justice VR Krishna Iyer, (speaking for himself, Beg, CJ and Bhagwati, J) in [Mohinder Singh Gill v. Chief Election Commissioner](#),⁶ albeit in a different context of the powers of the Election Commission of India and the parameters of Article 329(b) of the Constitution, pertaining to elections to the Houses of Parliament and the State Legislatures. Justice Krishna Iyer observed:

"2. Every significant case has an unwritten legend and indelible lesson. This appeal is no exception, whatever its formal result. The message, as we will see at the end of the decision, relates to the pervasive philosophy of democratic elections which Sir Winston Churchill vivified in matchless, words:

"At the bottom of all tributes paid to democracy is the **little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper** — no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point."

If we may add, the little, **large Indian shall not be hijacked from the course of free and fair elections by mob muscle methods, or subtle perversion of discretion by men "dressed in little, brief authority"**. For **"be you ever so high, the law is above you"**.

(emphasis supplied)

In order to maintain the purity of the electoral process, the "little cross" on the "little bit of paper" must be made **only** by the metaphorical "little man" walking into the "little booth" and no one else.

⁶ [\[1978\] 2 SCR 272](#) : (1978) 1 SCC 405

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46. The writ petition before the High Court shall stand disposed of in terms of the above directions.
47. List the Civil Appeal on 15 March 2024 for considering the response of the seventh respondent to the notice which has been directed to be issued to him.

Headnotes prepared by: Divya Pandey

Result of the case:
Directions issued.