



## **DEMOCRACY ON TRIAL: IN REFERENCE TO THE CHANDIGARH MAYOR ELECTION CASE**

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### **ABSTRACT**

*Elections at the Municipal level, as stated by Hon'ble CJI DY Chandrachud, form the microcosm of the larger democratic setup of the nation. However, the recent electoral misconduct by the Presiding officer himself who single-handedly attempted to overturn the outcome of the election shook these very foundations and has raised several questions about preserving the integrity of the electoral process. Thus, this piece first analyses this extraordinary case that warranted the exercise of jurisdiction under Article 142. It then delves into analysing the broader questions of how to prevent electoral misdemeanor by the presiding officers in future by referencing the 2015 Law Commission Report on Electoral Reforms and landmark cases. This analysis aims to underscore the importance of maintaining election integrity at grassroots levels, addressing issues such as presiding officer objectivity and the need for technological solutions in vote counting. The paper concludes with recommendations to enhance democratic processes and public trust in elections in India.*

**KEYWORDS:** Municipal Election, Electoral Misconduct, Presiding Officer, Electoral Reforms, Objectivity

### **INTRODUCTION**

Elections form an integral part of any democracy. Free and Fair elections have been held as an integral part of the Basic structure of the Indian Constitution<sup>2</sup> and maintaining the integrity of the process throughout, at the local-body level especially is foremost because they act as a microcosm of the larger democratic structure in the country.<sup>3</sup> While issues pertaining to election funding, anti-defection, etc. come up now and then, what if the presiding officer of the election himself is guilty of electoral misconduct? Undoubtedly it would strike at the heart of democracy. The instant case brings out this very occurrence. The concerned officer had the audacity to deface ballot papers fully knowing that the whole process was being video

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<sup>2</sup> *Indira Gandhi Nehru v Raj Narain* (1975) Supp SCC 1; *Kihoto Hollohon v Zachilhu and Ors.*, AIR 1993 SC 412.

<sup>3</sup> *Kuldeep Kumar v U.T. Chandigarh & Ors.*, (2024) INSC 129, ¶36 (Unreported)

graphed. The Hon'ble Supreme Court ("SC") yet again came forth to the rescue of democratic values, rightly invoking its jurisdiction under Article 142<sup>4</sup> to render complete justice in such an extraordinary case.

This analysis delves deeper into the question of the writ jurisdiction of the Courts over election cases and then possible ways to prevent such serious electoral misconduct in the future. To answer these questions, the 2015 Law Commission Report focusing on Electoral Reforms will be studied along with landmark cases in this regard, with the ultimate aim being to seek ways to strengthen democratic, free and fair elections at the grassroots level. This case provides an opportunity to delve into the more subtle and lesser-highlighted issues in the domain of elections like that of the objectivity of the presiding officer, making the counting process free from malpractices and unwarranted human intervention, and so on.

## **FACTS IN BRIEF**

The instant case came before the Hon'ble SC via Article 136<sup>5</sup> (Special Leave to Appeal) arising from an interim order (dated 31 January 2024) of a Division Bench of the High Court of Punjab & Haryana ("HC"). The petition was in the nature of a writ filed under Article 226,<sup>6</sup> alleging electoral malpractice by the presiding officer of the election for the post of Mayor at Chandigarh Municipal Corporation. In the impugned order, the HC declined to grant a stay or any interim relief to the petitioner. However, on 17 January 2024, the HC had, inter alia, directed Chandigarh Police to ensure that the elections were free and fair and also that the whole process be video recorded. The elections were postponed from the decided date i.e. 18 January, which was disputed. On finding that there was no valid ground for such postponement, the HC ordered the elections to be held on 30 January 2024.

There were two candidates for the post of Mayor. One was Mr Kuldeep Kumar, fielded by an alliance between the Aam Aadmi Party and the Indian National Congress. The other was Manoj Kumar Sarkar, a candidate set up by the Bharatiya Janta Party. There were a total of thirty-six eligible voters for the election. As per the result sheet, out of the 36 votes polled, 12 were for the former candidate, 16 were for the latter candidate and 8 votes were counted as invalid. the dispute arose on the alleged defacing of these 8 votes held to be invalid by the Presiding officer. Thereafter, the appellant approached the SC, alleging serious misconduct by the presiding officer and questioning the sanctity of the Mayoral election.

## **PRIMARY ISSUE**

The primary issue before the SC was whether the presiding officer was guilty of electoral misconduct by deliberately defacing votes which were in favour of the former candidate i.e. Mr. Kuldeep Kumar, to make the latter candidate win.

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<sup>4</sup> The Constitution of India. 1950, Art. 142.

<sup>5</sup> The Constitution of India. 1950, Art. 136.

<sup>6</sup> The Constitution of India. 1950, Art. 226.

## ARGUMENTS

### 1.1. PETITIONER

Based on the video recording of the election, the main argument put forth was that the presiding officer deliberately defaced all those 8 ballot papers with ink which were held to be invalid by him. This was done to make the other candidate win as all these 8 votes were in favour of the former candidate (the process being based on the first past the post system)

### 1.2. RESPONDENT

The presiding officer accepted that he did mark those 8 papers with ink, but it was because the papers were already invalid. Thus, while fulfilling his duty of signing all the votes under regulation 6(11) of the Chandigarh Municipal Corporation (Procedure and Conduct of Business) Regulations 1996,<sup>7</sup> he only marked the already defaced votes to highlight that they were invalid.

Further, the respondents argued that since the latter candidate had already resigned from the post during the pendency of these proceedings, fresh elections must be conducted under section 38(3) of the Punjab Municipal Corporation Act 1976<sup>8</sup> [extended to Chandigarh via the Punjab Municipal Corporation Law (Extension to Chandigarh) Act 1994].<sup>9</sup>

## THE JUDGEMENT

The SC perused ~~ed~~ the video recording of the election, especially the counting stage where the misconduct was alleged.<sup>10</sup> It ~~was thus the SC~~ found that the presiding officer was guilty of electoral misconduct and also under section 340 of the Cr.P.C, 1860<sup>11</sup> (for making a statement which, prima facie, appears to be false to his knowledge in the course of judicial proceedings).<sup>12</sup> While notice was to be issued for proceedings under section 340,<sup>13</sup> the SC arrived at the former judgement based on several factors.

First and foremost, this was because none of the three conditions laid out in regulation 6(10) of the Chandigarh Municipal Corporation (Procedure and Conduct of Business) Regulations 1996<sup>13</sup> for invalidation of votes cast was fulfilled in the instant case. These conditions are:

1. where a member votes for more candidates than one (only the appellant was voted for clearly in these ballot papers);
2. where the member places any mark on the paper by which he may be identified (no such marks existed on the papers) and

<sup>7</sup> The Chandigarh Municipal Corporation (Procedure and Conduct of Business) Regulations, 1996, §6(11).

<sup>8</sup> The Punjab Municipal Corporation Act, 1976, §38(3).

<sup>9</sup> The Punjab Municipal Corporation Law (Extension to Chandigarh) Act 1994.

<sup>10</sup> The Code of Criminal Procedure, 1860, §340.

<sup>11</sup> *Supra* note 2, ¶40.

<sup>12</sup> *Supra* note 9, §340

<sup>13</sup> The Chandigarh Municipal Corporation (Procedure and Conduct of Business) Regulations, 1996, §6(10).

3. 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<sup>14</sup> (even after the mark added by the Presiding officer is considered, it is not at all doubtful for whom the vote was cast i.e. the appellant).

On careful consideration of the ballot papers along with the recorded video, the SC observed that none of those invalidated votes would have been so if the presiding officer had not marked them with ink himself.<sup>15</sup> Notably, all the votes marked were indeed for the appellant.<sup>16</sup> Moreover, the SC noted that regulation 6(1) requires that the meeting's presiding officer should be a councillor who is not a candidate for election.<sup>17</sup> The very purpose of such a provision is to ensure objectivity in his conduct. Thus, the presiding officer herein failed his duties as a presiding authority and is liable for serious electoral misconduct by deliberately favouring one candidate over the other.

Also, after casting the votes, the ballot papers are folded vertically 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.<sup>18</sup> Thus, leaving no scope for invalidation or ambiguity of choice in the votes.

Further, the SC refused to reconduct the elections for the post, finding it inappropriate to set aside the entire election proceeding only due to the misdemeanour of the presiding officer during counting.<sup>19</sup> Such re-election would further undermine the democratic principles as it was not defects in the choice of the voters which created a need for re-election but only the conduct of the presiding officer. The choice of the voters was crystal clear in even these defaced votes. Thus, the court went on to add the so-called invalid votes to the votes of the appellant, making the total tally twenty votes and thereby declaring him the rightfully elected mayor of Chandigarh.

Lastly, the SC invoked its authority under Article 142 of the Constitution<sup>20</sup> as the instant case is not any ordinary case of election malpractice. Rather, this is a case of brazen misdemeanour by the presiding officer himself, making the situation extraordinary enough to warrant such jurisdiction to render complete justice.

## ANALYSIS

This case came as a significant opportunity for the SC to unequivocally signify the importance of maintaining the integrity of elections at the grassroots levels i.e. at the Panchayat and Municipality levels. There can be no dispute regarding the reasons for the decision rendered by the SC in this case. The facts and circumstances considered clearly showcased the utter dereliction of duty and rather serious electoral misconduct by the presiding officer. The SC was also correct in refusing to hold fresh elections as that would

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<sup>14</sup> *Supra* note 2, ¶ 19, 29.

<sup>15</sup> *Id.*, ¶ 27.

<sup>16</sup> *Id.*, ¶ 26.

<sup>17</sup> The Chandigarh Municipal Corporation (Procedure and Conduct of Business) Regulations, 1996, §6(1).

<sup>18</sup> *Supra* note 2, ¶ 32.

<sup>19</sup> *Id.*, ¶ 35.

<sup>20</sup> The Constitution of India, 1950, Art. 142.

have arbitrarily negated an otherwise validly executed election proceedings, had the presiding officer not maliciously intervened.

While the SC successfully fulfilled its duty in safeguarding the democratic principles yet again, two major aspects can be analysed in the instant case. First, where did the Judiciary derive its writ jurisdiction in the presence of explicit bars in the Constitution? Second, how was such a brazen misdemeanour effected and how can it be prevented in future?

## REGARDING JURISDICTION

While Article 329(b) of the Constitution<sup>21</sup> bars the writ jurisdiction of the court on challenges to the elections of the Parliament and the State Legislatures, articles 243O<sup>22</sup> and 243ZG<sup>23</sup> bars such jurisdiction for elections to any panchayat and municipality as well. However, it has already been held that remedy under article 226<sup>24</sup> cannot be taken away by any law. Judicial Review is part of the Basic Structure of the Constitution which can neither be limited by any statute nor any constitutional amendment.<sup>25</sup> Thus, articles 243O<sup>26</sup> and 243ZG<sup>27</sup> are to be subjected to articles 226<sup>28</sup> and 227.<sup>29</sup> However, such a remedy is at the discretion of a High Court.<sup>30</sup> Further, the bar contained in articles 243O<sup>31</sup> and 243ZG<sup>32</sup> are on the ordinary jurisdiction of the Courts and not the extraordinary jurisdictions under articles 226<sup>33</sup> and 136.<sup>34</sup> Also, while article 329<sup>35</sup> was an integral [component](#) of our Constitution originally, article 243<sup>36</sup> was brought by Constitutional amendments even after the position of Judicial Review as part of the Basic Structure was established.<sup>37</sup> Thus the former cannot override the latter.

Further, the SC showed disappointment in the HC owing to a failure to pass an interim order after the process was video graphed and presented to the Division Bench of the HC.<sup>38</sup> The SC seems to be correct in expressing such dissatisfaction. As held by the SC, any irregularity committed during the course of the

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<sup>21</sup> The Constitution of India. 1950, Art. 329(b).

<sup>22</sup> The Constitution of India. 1950, Art. 243O.

<sup>23</sup> The Constitution of India. 1950, Art. 243ZG.

<sup>24</sup> The Constitution of India. 1950, Art. 226.

<sup>25</sup> *Lal Chand v State of Haryana*, AIR 1999 P&H 1 (FB).

<sup>26</sup> *Supra* note 21.

<sup>27</sup> *Supra* note 22.

<sup>28</sup> *Supra* note 23.

<sup>29</sup> The Constitution of India. 1950, Art. 227.

<sup>30</sup> *Boddula Krishnaish v State Election Commissioner*, (1996) 3 SCC 416; *Mahaveer Singh v Raghunath*, AIR 1983 NOC 220 (Raj).

<sup>31</sup> *Supra* note 21.

<sup>32</sup> *Supra* note 22.

<sup>33</sup> *Supra* note 23.

<sup>34</sup> The Constitution of India. 1950, Art. 136.

<sup>35</sup> The Constitution of India. 1950, Art. 329.

<sup>36</sup> The Constitution of India. 1950, Art. 243.

<sup>37</sup> M.P. JAIN, INDIAN CONSTITUTIONAL LAW, 528 (Lexis Nexis 2022)

<sup>38</sup> *Supra* note 2, ¶14.

election can be challenged only after the election process is over.<sup>39</sup> In the instant case, the election process was indeed over and the BJP candidate was declared the winner by the Presiding Officer. The video recording of the entire process was also presented to the HC. Even then, the HC failed to pass any interim orders. The HC could have, rather should have passed an appropriate order at this stage to protect electoral sanctity. Moreover, the SC has modified its earlier stance in the *Election Commission of India v Ashok Kumar* case,<sup>40</sup> holding that nothing bars the Court from smoothening an ongoing election proceeding to preserve a vital piece of evidence which might be destroyed or rendered irretrievable by the time results are declared. In its earlier orders, undoubtedly the HC rightly showcased the implementation of this principle (while also observing the self-imposed limitation of not delaying the election as a result of its orders)<sup>41</sup> by only passing orders to smoothen the election process for e.g., directing the Chandigarh Police to ensure the security of the Councillors and video graphing the entire process, etc. However, it later failed to fulfil its implicit duty to timely pass orders after the process was completed according to its directions, considering the gravity of the case.

Moreover, the SC was apt in invoking its jurisdiction under Article 142<sup>42</sup> owing to the gravity and the rareness of the matter at hand. However, in what sense or measure exactly it deployed this jurisdiction remains unclear in the judgment.

### 1.3. PREVENTING ELECTORAL MISDEMEANOUR

Even though this case ends with a happy ending, it calls into question the sanctity of all other, non-video-graphed election processes. Who knows what happens behind the curtains of counting? Most cases probably do not even come to the court, let alone attain such limelight. Further, when even after fully knowing that his acts are being video-graphed, the Presiding Officer could have the audacity of defacing the votes, only video graphing all elections might as well not serve the purpose. It is also not the case that such officers are unaware of the penalties in case they are caught. In accordance with section 136 of the Representation of People Act, any officer or clerk on election duty who commits an offence is punishable by two years in prison, a fine, or both, and six months in prison or a fine for all others.<sup>43</sup> Thus, it is also not the case that there is no deterrence through penalisation under the law. It therefore becomes crucial to look into the loopholes which leave room for such electoral misconduct and then endeavour to prevent such instances; or else public trust in democratic ideals and the justice delivery system will be lost, undermining the basic foundations of our Constitution itself. Thus, the real question posed herein is how to ensure that the sanctity of elections, down to the local-body levels is preserved.

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<sup>39</sup> Ponnuswami NP V Returning Officer, AIR 1952 SC 64

<sup>40</sup> (2000) 8 SCC 216

<sup>41</sup> Lakshmi Charan Sen v AKM Hassan Uzzaman, AIR 1985 SC 1233

<sup>42</sup> The Constitution of India. 1950, Art. 142.

<sup>43</sup> The Representation of the People Act, 1951, §136.

### 1.3.1. Maintaining Objectivity of the Presiding Officer

The first question is about the objectivity of the Presiding officer. Similar to apprehensions of biases by the Speaker in dealing with Parliamentary Disqualification cases<sup>44</sup> who is ultimately a member of a particular political party; a councillor, even though not standing for elections himself, might not be able to leave his political colour and bias aside while donning the hat of the Presiding officer. Thus, it is important to check for any conflict of interests or biases while choosing a presiding officer or else, bringing in a qualified individual who has no interest in the election's outcome as the presiding officer. It is crucial to ensure such objectivity or else the whole electoral process loses its essence, the instant case being a classic example.

Also, it is noteworthy that Union Territories are governed by the Central Government and any directive issued by the Central government or the President is binding on the administration of the Union Territory.<sup>45</sup> Therefore, given this large overarching power, it must be additionally considered that the elections of U.T.s are not unduly influenced by the political parties helming the Centre. This concern is raised here as in the instant case, the candidate which was made to win by the presiding officer belonged to the political party ruling at the Centre. Though there exists no such proof, this is just to draw attention to the fact that to maintain true objectivity and integrity in the election process, any sort of political influence must be avoided.

### 1.3.2. Exploring the applicability of the Recommendations of the 255<sup>th</sup> Law Commission Report<sup>46</sup>

The Law Commission Report of 2015 delved into several important aspects of Electoral Reforms. Three of the major aspects discussed in the Report relevant to the current context are regarding adoption of the system of Proportional Representation ("PR"), the Establishment of Election Benches and using a totaliser for the counting of votes.

#### 1.3.2.1. Adopting the system of Proportional Representation:

The Report recognises the faults in the existing First Past the Post ("FPTP") system and recommends the adoption of a hybrid approach i.e. a mix of both the FPTP and PR systems and combining elements of both direct and indirect elections.<sup>47</sup> The adoption of the PR system might prove helpful, especially in Municipal elections like that of Deputy Mayor, Senior Deputy Mayor and Mayor. This is because while the PR system might be ineffective in votes of the larger populace and make the process complicated for diverse voters, its usage in such small-scale elections like Mayoral Elections would firstly, make it a bit more difficult for officials to tamper

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<sup>44</sup> Editorial, *Over the top: On Mahua Moitra and panel's disqualification recommendation*, THE HINDU, November 11, 2023.

<sup>45</sup> Chandigarh Administration v Surinder Kumar (2004) 1 SCC 530

<sup>46</sup> Law Commission of India, *Electoral Reforms*, Report No.255 (2015).

<sup>47</sup> *Id.*, ¶ 4.19.1

votes with as much ease as they can in the FPTP system. This is because when a list of candidates with each voter filling out their preferences is involved, quickly marking ballots with ink to invalidate them would be difficult. Second, the three elections would not have to be conducted separately. The three posts may be filled based on the preference rankings of the voters in one go, that is, the candidate with the most first preferences can be declared the Mayor, the second in line the Senior Deputy Mayor and the next the Deputy Mayor. Thirdly, no votes would be wasted in this process and ultimately the views of all the voters would reflect.

#### *1.3.2.2. Establishing dedicated election benches and expediting election cases:*

The report lists several amendments to the Representation of the People Act<sup>48</sup> to expedite the process of disposal of election cases, by giving way to the establishment of special election benches across High Courts, setting time limits for passing orders, minimising adjournments etc..<sup>49</sup> The SC has already expressed its desire to set up such benches in *Mohd. Akbar vs. Ashok Sahu & Ors*<sup>50</sup> owing to the relatively short tenure of the members of the Parliament and the State Legislative Assemblies. One of the main instructive examples is that of the UK, where election disputes are resolved before an election court (having the same powers as that of a High Court), which comprises two judges of the Queen's Bench Division, who are on a rota for the trial of parliamentary election petitions.<sup>51</sup> Thus, the aim is to expedite the disposal of election cases so that public trust in such democratic processes is maintained and the officials in charge along with the candidates are deterred against dereliction of duty and electoral misconduct.

#### *1.3.2.3. Using a totaliser or similar technologies for counting:*

While a totaliser may be employed for large-scale elections and where EVMs are involved, similar technologies may be employed even for small-scale elections like Mayoral elections. This would remove the possibility of tampering with votes at the behest of the officials in charge and make the process more transparent. It would also increase the secrecy of votes during counting, thus preventing the disclosure of voting patterns and countering fears of intimidation and victimisation.<sup>52</sup>

## CONCLUSION

By and large, this case was indeed exceptional. Ordinarily, questions regarding elections are raised over the financing of elections, anti-defection, and maybe disqualifications; however, cases of mishandling by the

<sup>48</sup> *Supra* note 35.

<sup>49</sup> *Supra* note 38, Ch. X, Election Petitions, ¶ 18.9.

<sup>50</sup> Civ. App. No. 2538-40 of 2015, arising out of SLP (Civ) Nos. 2487-2489 of 2015.

<sup>51</sup> *Supra* note 38, ¶10.33.

<sup>52</sup> *Supra* note ¶18.12.1.



presiding officer of the election itself are rare in the SC, thus rightly warranting jurisdiction under Article 142<sup>53</sup> for delivering complete justice.

While the question of writ jurisdiction for election cases has sparked debate in the past, eventually, the Courts have upheld such jurisdiction down to the level of local-body elections as being part of the power of Judicial Review. Next, while free and fair elections have been held to be part of the Basic structure, effecting it in actuality is difficult, considering myriad practical factors and political influences, biases, etc. Thus, regarding questions of maintaining the sanctity of the electoral processes in the Country, landmark precedents and the 255<sup>th</sup> Report of the Law Commission, which proposes the adoption of a hybrid system of elections, combining elements of both direct and indirect elections, expediting the disposal of election petitions via the establishment of dedicated election benches across all High Courts, usage of totalisers to remove human intervention in the counting of votes cast via EVM machines, etc. are noteworthy recommendations.

Overall, until and unless people recognise the importance of the sanctity of the electoral process, down to the local body elections, no fine would be enough and achieving long-term results would be difficult. Thus, it is important to inculcate a sense of importance with regard to elections even at the lowest rung of the hierarchy for the democratic ideals to be effected in letter and spirit. To conclude by reiterating the SC,

*‘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”’.*<sup>54</sup>

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<sup>53</sup> *Supra* note 41.

<sup>54</sup> Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405.