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

(146)

**CWP-1258-2025(O&M)
Date of Decision: 20.01.2025**

Kuldeep Kumar

.....Petitioner

Versus

U.T. Chandigarh through Secretary and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Gurminder Singh, Senior Advocate with
Mr. Ferry Sofat, Advocate and
Mr. Kartik Sharma, Advocate for the petitioner.

Mr. Amit Jhanji, Senior Standing Counsel with
Mr. Sumeet Jain, Additional Standing Counsel,
Mr. Himanshu Arora, Additional Standing Counsel and
Ms. Eliza Gupta, Advocate, for U.T. Chandigarh.

Mr. Chetan Mittal, Senior Advocate with
Mr. Kunal Mulwani, Advocate,
Mr. Sanjiv Ghai, Advocate,
Mr. Ritvik Garg, Advocate,
Mr. Udit Garg, Advocate and
Mr. Parminder S. Kaul, Advocate for respondent No.4.

SURESHWAR THAKUR, J. (Oral)

1. In the instant petition, the petitioner espouses for the hereinafter
reliefs:-

“for issuance of a writ in the nature of certiorari for quashing of
the impugned notice dated 07.01.2025 (Annexure P-6) whereby
the office of the respondent No.3 has declared the elections to
the post of Mayor, Senior Deputy Mayor and Deputy Mayor to
be conducted on 24.01.2025 being premature as the period of
one year will commence from 23.02.2024 till 22.02.2025, when

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respondent No.4 had declared the petitioner as the Mayor, Municipal Corporation, Chandigarh after the declaration made by the Hon'ble Supreme Court of India vide its judgment dated 20.02.2024 whereby taking the judicial notice of the misconduct of the presiding authority who was issued the notice as well by the Hon'ble Supreme Court of India as to why the proceedings be not initiated against him under Section 340 Cr.P.C.

And

Further for the issuance of an appropriate writ, order of direction especially in the nature of certiorari quashing the letter dated 07.01.2025 whereby the office of the Id. Respondent no. 3 has declared the elections to the post of mayor, senior deputy mayor and deputy mayor to be conducted on 24.01.2025 without considering/deciding the resolution passed by the municipal corporation, Chandigarh for amendment of regulation 6 of the Chandigarh municipal corporation (procedure and conduct of business) regulations, 1996 whereby the elections have to be conducted by way of show of hands instead of voting through ballot.

and

Further for the issuance of an appropriate writ, order of direction especially in the nature of mandamus for directing the official respondents to consider and act upon the resolution dated 29.10.2024 (Annexure p-2) whereby it has been resolved by majority that the regulation 6 of the Chandigarh municipal

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corporation (procedure and conduct of business) regulations, 1996 be amended and the election for the post of mayor, senior deputy mayor and deputy mayor be conducted by show of hands instead of secret ballot in order to prevent the violation of fundamental democratic principles in the manner which was adopted by the presiding officer in the year 2024 and the judicial notice of his conduct was taken by the Hon'ble supreme court of India in its judgment dated 20.02.2024 (annexure p-12) and to facilitate a transparent and equitable election process in the interests of equity, justice and good conscience.

And

Further for the issuance of an appropriate writ, order or direction especially in the nature of certiorari for quashing of the impugned notice dated 07.01.2025 (Annexure p-6), it being in gross violation of regulation 6(12) of the Chandigarh Municipal Corporation (Procedure and Conduct of Business) Regulations, 1996 as presiding authority vide impugned notice dated 07.01.2025 has been appointed for the purpose of counting by the ld. Respondent no. 3 itself whereas regulation 6(12) states that the votes' of all the candidates shall be counted by the municipal officials or employees who are to be designated by the presiding authority.

and

Further for the issuance of an appropriate order or direction that during the pendency of the present writ petition the operation of



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the impugned notice dated 07.01.2025 issued by the ld. Respondent no. 3 shall remain stayed in the interests of equity, justice and good conscience.

and/or

Further an appropriate order or direction that the elections for the post of mayor, senior deputy mayor and deputy mayor be conducted by way of show of hands under the supervision of an observer to be appointed by this Hon'ble court for the purpose of free and fair elections in the interests of equity, justice and good conscience.

and/or

Further an appropriate order or direction be issued to the official respondents for conducting the videography of the whole election process to be held through show of hands in the interests of equity, justice and good conscience.

and/or

For issuance of any other writ, order or direction which this Hon'ble Court may deem fit in the facts and circumstances of the present case may kindly be issued in favor of the present petitioner.

FACTUAL BACKDROP

2. Initially, the elections to the Municipal Corporation, Chandigarh, were notified to be concluded on 27.12.2021. The said elections became so conducted. The elected Councillors subscribed to their oath of office on 08.01.2022. On the very same day, in terms of Section 38

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of The Punjab Municipal Corporation Act, 1976 (as extended to the Union Territory, Chandigarh) (hereinafter in short referred to as ‘the Act of 1976’), provisions whereof are extracted hereinafter, the first meeting of the Municipal Corporation was held. In the said held first meeting, Smt. Sarabjit Kaur Dhillon was elected as a Mayor:-

“**38. (1)** The Corporation shall, at it first meeting in each year, elect one of the its elected members to be the Chairperson to be known as the Mayor and the other two such members to be the Senior Deputy Mayor and the Deputy Mayor of the Corporation:

Provided that during the duration of the Corporation, the office of the Mayor shall be reserved in favour of a member who is a woman for the first and the fourth year of the Corporation and in favour of a member belonging to a Scheduled Caste in the third year of the Corporation.

(2) Omitted.

(3) On the occurrence of any casual vacancy in the office of the Mayor, Senior Deputy Mayor or Deputy Mayor, the Corporation shall within one month of the occurrence of such vacancy elect one of its members as Mayor or Senior Deputy Mayor or Deputy Mayor, as the case may be, and every person so elected shall hold office for the remainder of his predecessor's term of office.

(3A) If the vacancy be a casual vacancy in the office of the Mayor and is reserved for a woman or for a member belonging



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to the Scheduled Caste, the vacancy shall be filled by electing one of the councillors from amongst women or members of the Scheduled Castes, as the case may be.

(4) The Mayor or the Senior Deputy Mayor or the Deputy Mayor shall hold office from the time of his election until the election of his successor in office, unless in the meantime he resigns his office as Mayor or Senior Deputy Mayor or Deputy Mayor or his term of office as a member of the Corporation terminates in any manner or unless in the case of any of the Deputy Mayors he is elected as Mayor. They shall be eligible for re-election.

(5) The Mayor shall be entitled to the payment of such honorarium and may be given such facilities in respect of residential accommodation, telephone, conveyance and the like as may be prescribed.

(6) The Mayor may obtain reports from the Commissioner on any matter connected with the municipal government of Chandigarh.”

3. It is not disputed amongst the counsels appearing today before this Court that in terms of Article 243U of the Constitution of India, provisions whereof become extracted hereinafter, the term of the present Municipal Corporation, rather is not to last beyond five years from the date of the conducting of the apposite first meeting:-

“243U Duration of Municipalities, etc. - (1). Every

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Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer:

Provided that a Municipality shall be given a reasonable Opportunity of being heard before its dissolution.

(2). No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in Clause (1).

(3). An election to constitute a Municipality shall be completed,

(a) before the expiry of its duration specified in Clause (1);

(b) before the expiration of a period of six months from the date of its dissolution:

Provided that where 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 election under this clause for constituting the Municipality for such period.

(4) A Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would have continued under Clause (1) had it not been so dissolved.”

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4. However, the exception thereto is that upon the supra term becoming shortened through the Corporation becoming dissolved, thus, through the Administrator concerned, rather exercising his powers as vested in him through the mandate occurring in Section 407 of the Act of 1976.

5. However, the supra exception to the tenure of the democratically elected instant local self-Government, thus, surviving upto 05 years and not beyond the said tenure, rather since the conducting of the first meeting on 08.01.2022, hence obviously is not applicable to the instant case. Therefore, the term of the instant Corporation is, but expected to last upto its normal tenure of 05 years, to be computed from the date of the conducting of the first meeting which was so conducted on 08.01.2022.

6. Though, for reasons to be assigned hereinafter, the provisions embodied in sub-Section (1) of Section 38 of the Act of 1976, thus, may have an iota of bearing in respect of the dispute which has emerged amongst the parties at *lis*, therebys the said provisions have already been extracted hereinabove.

7. Moreover, this Court is also required to be assessing the signification as becomes acquired by the mandatory statutory provisions, as become carried in the hereinabove extracted provisions, moreover, importantly, by the proviso, as exists, underneath sub-Section (1) of Section 38 of the Act of 1976. An incisive reading of the said proviso makes upsurgings appertaining to the manners of reservations qua the seat of Mayor, thus being made respectively vis-a-vis an elected lady Councillor vis-a-vis the unreserved category, besides vis-a-vis the Scheduled Caste category candidate. The supra proviso speaks that, insofar as, the

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reservation to be bestowed to an elected lady Councillor for hers being elected to the office of Mayor, the same shall become bestowed vis-a-vis qua her, thus, for the first and fourth year of the Corporation, whereas, the reservations as made qua an elected Councillor, thus elected against the apposite Scheduled Caste seat, thus, for his being subsequently enabled to contest to the office of Mayor, rather is to accrue in the third year of the Corporation, besides vis-a-vis a Councillor who becomes elected against an unreserved seat, thereupon he is endowed with the statutory privilege to subsequently become elected against the post of the Mayor, but in the second and the fifth year of the Corporation.

8. Now, since this Court has, on applying the supra extracted constitutional mandate appertaining to the duration of the term of the Corporation, has made an inference, that the term of the Corporation, thus is to last upto five years, unless the said term becomes shortened through dissolution(s) thereof being made, through the Administrator, exercising the powers vested in him under Section 407 of the Act of 1976. In the wake of the said inference, this Court is also required to be analyzing, the supra facet relating to the supra makings of respective reservations' to the seat of the Mayor of the Corporation, wherebys respectively qua the first and the fourth year in the tenure of the Municipal Corporation, the said reservation becomes endowed to the elected lady Councillor, whereas, for the third year of the tenure of five years' term of the Corporation, the reservation qua the seat of the Mayor becomes endowed to a candidate belonging to the Scheduled Caste category.

9. In the instant case, qua the present Corporation during the phase

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of the third year of its coming into being through elections thereto becoming concluded on 08.01.2022, thereupons during the third year of the five year tenure of the Corporation, the seat of the Mayor, to the supra Corporation fell to the quota of the Scheduled Caste candidate. However, prior thereto the Corporation proceeded to in its first convened meeting as became held on 08.01.2022, as became so held in terms of Section 38 of the Act of 1976, thus, elected one Smt. Sarabjit Kaur Dhillon, thus as the Mayor of the Municipal Corporation, Chandigarh. Her term as such commenced on 08.01.2022 and lasted upto 16.01.2023. Subsequently, one Sh. Anup Gupta was elected as a Mayor in the convened meeting of the Municipal Corporation as became held on 17.01.2023 and his term lasted upto 29.01.2024. Initially, one Mr. Manoj Sonkar was elected as the Mayor of the Municipal Corporation, Chandigarh on 30.01.2024. In the said year, the seat of Mayor became reserved for the Scheduled Caste category candidate. Therefore, in the supra meeting, the supra was elected as Mayor, but in the third year of the apposite tenure of the Corporation.

10. However, since the petitioner filed a Civil Writ Petition bearing CWP No.2160 of 2024 titled Kuldeep Kumar Vs. U.T. Chandigarh and others, wherebys he challenged the election of Mr. Manoj Sonkar as the Mayor of the Municipal Corporation, Chandigarh, as became conducted, thus, in a convened meeting of the Corporation held on 30.01.2024. Apparently on 10.01.2024, a notification bearing No.DC/MA/MCC/2024/1068 (Annexure P-7), was made by the respondent No.3, wherebys a meeting was ordered to be convened for conducting elections to the office of the Mayor of the Municipal Corporation, Chandigarh. The said notification

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appertained to the supra notified seat of the Mayor, as fell to the Scheduled Caste category candidate, as the year following the issuance of the notification, was the third year of the life of the Corporation and in the said third year, the seat of the Mayor but fell to the category of Scheduled Caste candidate. In the writ petition supra (CWP No.1260 of 2024), the hereinafter extracted question of law was framed:-

“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 post 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?”

11. On the supra formulated question of law, the co-ordinate Bench of this Court, for the reasons detailed therein, proceeded to quash order dated 18.01.2024 (Annexure P-6 in CWP No.1350 of 2024), whereby the pronounced election programme, thus for conducting elections to the seat of the Mayor, Municipal Corporation, Chandigarh, rather became quashed and set aside. The election programme echoed in the said notification though was to end on 18.01.2024 but was postponed to 06.02.2024. The quashing and setting aside of the supra notification was also with certain directions, which become extracted hereinafter:-

“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

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(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.”

12. In terms of the supra extracted directions, elections to the Municipal Corporation, Chandigarh, were held on 30.01.2024. However, in the said convened meeting, one Mr. Manoj Sonkar was elected as the Mayor of the Municipal Corporation, Chandigarh.

13. The election of supra elected Mayor to the Municipal Corporation, Chandigarh, came under a challenge in a writ petition bearing CWP No.2169 of 2024. When the supra writ petition came up before a co-

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ordinate Bench of this Court on 30.01.2024, thus thereons, the hereinafter extracted order was passed, whereby a further espousal as became made before the learned co-ordinate Bench of this Court, rather for restraining the respondents from making headways in the notified election programme, but became declined. Resultantly, the aggrieved from the said declining order instituted Special Leave to Appeal (SLP) (C) bearing No.2998 of 2024 before the Apex Court:-

“Issue notice to the respondents.

Mr. Anil Mehta, Senior Standing Counsel, U.T., Chandigarh, along with Mr. Sanjiv Ghai, Advocate, Mr. Sumeet Jain, Advocate, Mr. Himanshu Arora, Advocate and Mr. Nishant Indal, Advocate, accepts notice on behalf of respondent Nos. 1 and 2.

Mr. Prateek Gupta, Advocate, accepts notice on behalf of respondent Nos. 3 and 4, whereas Mr. Manish Bansal, Public Prosecutor, U.T., Chandigarh along with Mr. Rajeev Anand, APP, U.T., Chandigarh, Mr. Ankush Singla, Advocate and Mr. Navjit Singh, Advocate, accepts notice on behalf of respondent Nos. 5 and 6. They seek four weeks' time to file their response.

At this stage, Mr. Gurminder Singh, learned Senior Counsel, appearing for the petitioner, prays for stay of the results declared in respect of the election to the post of Mayor, Municipal Corporation, Chandigarh.

On behalf of the respondents, it has been submitted that the result of the election in question be not stayed as said result is

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being challenged on the basis of the disputed questions of fact.

It is further pointed out that the disputed questions of fact cannot be decided under Article 226 of the Constitution.

Considered.

Put up after three weeks on 26.02.2024.”

14. It is imperative to state that since the espousal for restraining the respondents from making headways with the agenda set up in the convened meeting as related to the conducting of elections to the seat of the Mayor to the Municipal Corporation, Chandigarh, becoming held, rather became declined, thereby the elections to the seat of the Municipal Corporation, did become so held, and therein as stated supra, Mr. Manoj Sonkar became elected. In the SLP (C) bearing No.2998 of 2024, which became converted to Civil Appeal No.2874 of 2024, a challenge was raised to the declining order supra as became made against the writ petitioner i.e. one Kuldeep Kumar.

15. A reading of the judgment pronounced by the Apex Court, on the supra Civil Appeal, makes it clear that the Apex Court, had proceeded to, in paragraph 9 of its verdict, paragraph whereof, becomes extracted hereinafter, alluded to the judgment rendered by the co-ordinate Bench of this Court on 20.02.2024, whereby this Court had declined to order for the postponement of elections:-

“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

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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,



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prior to, during or after the election process.”

16. Moreover therein, there is also reference that yet this Court had directed that the elections to the post of Mayor, Senior Deputy Mayor and Deputy Mayor, becoming conducted at 10 AM on 30.01.2024. As also therein, the supra extracted further directions were made, rather for ensuring the conductings of free and fair elections. The Apex Court made a tabulation of the number of votes polled by one Kuldeep Kumar and by one Mr. Manoj Kumar and also made detailings therein vis-a-vis the number of valid votes polled and the numbers of invalidly polled votes. The said table becomes extracted hereinafter:-

“MUNICIPAL CORPORATION CHANDIGARH

ELECTION OF MAYOR

RESULT SHEET

Sr. No.	Name of the Councillors	Vote Polled N
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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17. Subsequently, the Apex Court in apposite paragraph 13, referred to the alleged electoral malpractices which became indulged into by the presiding officer/seventh respondent in the SLP, during the process of counting of votes. The said indulged into malpractices by the Presiding Officer concerned, as stated supra, had led to the aggrieved one Mr. Kuldeep Kumar to claim relief for staying the conducting of elections/declaration of results, relief whereof, however, was declined and which led him to assail the said declining order through his making a SLP before the Apex Court.

18. In paragraph 14 of the verdict recorded by the Apex Court in SLP supra, there is an allusion, to the prepared video recordings of the counting process, becoming played in open Court, which led the Apex Court to pass therein an interim order, which becomes reproduced hereinafter:-

“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



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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:

- (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.”

19. Subsequently, the apposite paragraph 15 of the verdict recorded by the Apex Court, unfolds that when the Civil Appeal/SLP was re-listed before the Apex Court, that then the hereinafter extracted order was passed, wherebys the Apex Court, thus, summoned the entire record pertaining to

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the elections to the seat of the Mayor, besides theirs becoming sequestered under the custody of the Registrar General of the High Court of Punjab and Haryana, 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:-

“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.

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.

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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.”

20. Pursuant to the supra order dated 19.02.2024, the entire record became produced before the Apex Court in a sealed cover and the secure custody by Shri Varun Nagpal, OSD (Litigation) of the High Court of Punjab & Haryana. A reading of paragraph 17 which occurs in the judgment recorded by the Apex Court, in SLP supra, unfolds that the preserved records including the video footage relating to the conducting of the relevant elections were played before the Apex Court and subsequently, the Apex Court was led to make some observations, which occur in apposite paragraphs No.18 to 21 of the verdict supra rendered by the Apex Court. In paragraph 25 of the verdict supra, paragraph whereof becomes extracted hereinafter, the Apex Court made a reference to Regulation 6 (9) of the Chandigarh Municipal Corporation (Procedure and Conduct of Business) Regulations, 1996 (hereinafter to be referred as ‘the Regulations’), provisions whereof indicate, 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, whereafter the ballot paper is required to be then folded and placed in the ballot box. The said observations were made in terms of the records which were produced before the Apex Court in secure custody.

21. The entire dispute which became cultivated before the Apex Court is detailed in paragraph 26 of the verdict recorded by the Apex Court,

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paragraph whereof becomes extracted hereinafter:-

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

22. In paragraphs 27 and 28, which are reproduced hereinafter, the Apex Court has deprecated the therein detailed ill-acts of the Presiding Officer, who presided over the elections to the seat of the Mayor of the

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Municipal Corporation, Chandigarh:-

“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.”

23. The apposite paragraph 30 also, paragraph whereof becomes extracted hereinafter, understates the gross electoral malpractices which

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became indulged into by the Presiding Officer concerned:-

“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 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.”

24. During the course of arguments becoming addressed before the Apex Court, one Mr. Manoj Sonkar, who was elected as a Mayor, was stated to have tendered his resignation, whereupons the counsel concerned alluded

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to the provisions embodied in Section 38 (3) of the Act of 1976, which are already extracted hereinabove, whereins, within a month of the occurrence of the apposite vacancy, as did purportedly occur upon one Mr. Manoj Sonkar tendering his resignation, thus, a meeting is required to be convened for enabling the elected Councillors, who comprise the electoral college concerned, thus, to proceed to elect from amongst them, but from the reserved category candidate, thus, the concerned to the post of Mayor of the Municipal Corporation, Chandigarh.

25. Moreover, the Apex Court in paragraph 35 of the verdict supra, which becomes reproduced hereinafter, has proceeded to take a view, that it would be inappropriate to set aside the concluded election process in its entirety, as any interference being made with the concluded election to the seat of the Mayor. rather would result in the destruction of the fundamental democratic principles which has taken place as a consequence of the conduct of the presiding Officer:-

“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



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taken place as a consequence of the conduct of the Presiding Officer.”

26. In paragraph 37, as occurs in the verdict supra made by the Apex Court, a view became taken, that in the context of the jurisdiction vested in the Hon’ble Supreme Court under Article 142 of the Constitution of India, therebys the Apex Court after invoking the said vested constitutional jurisdiction, thus to ensure that complete justice is done and also to ensure that the process of electoral democracy is not permitted to be thwarted by the supra ill-electoral practices which became indulged into by the presiding officer, thus proceeded to in paragraph 38 of the verdict supra, set aside the election of Mr. Manoj Sonkar to the seat of the Mayor of the Municipal Corporation, Chandigarh, and proceeded to declare one Mr. Kuldeep Kumar to be the validly elected candidate to the seat of Mayor of the Municipal Corporation, Chandigarh. The date wherebys the said declaration was made is 20.02.2024. Conspicuously, since the entire election process was not set aside, but only the results of the elections were quashed, wherebys Mr. Manoj Sonkar who was elected to the seat of Mayor was unseated, whereas the present petitioner was declared to be the elected Mayor, thereupons, there was no requirement of any first meeting of the Corporation being held for thereins elections to the seat of Mayor being conducted. Consequently, as stated hereinafter, the date of the present petitioner becoming declared to be elected as a Mayor in the election which was conducted in the first convened meeting on 30.01.2024 is the relevant date for endowing qua him the full span of 12 months for, thus, his occupying the said seat.

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**27. SUBMISSIONS**

(I) Learned counsel appearing for the petitioner submits, that though Section 38 of the Act of 1976, provisions whereof become already extracted hereinabove, makes a statutory ordainment, that in the apposite first meeting, the elected Councillors are required to be electing the Mayor. Therefore, he submits that when the said first meeting, as appertaining to the relevant third year, which fell to the quota of the Scheduled Caste category candidate, thus was uncontestedly, as stated supra, but was held on 30.01.2024, therebys he submits that the Scheduled Caste category candidate are to be permitted to continue to serve as the duly elected Mayor of the Municipal Corporation concerned, thus, for the full span of 12 months, rather covering the apposite third year.

(II). In short, in other words, he submits that therebys the purposive legislative intent as endowed vis-a-vis the elected Councillor against the reserved quota, to in the relevant years, thus serve as the elected Mayor, but would become completely sub-served. As such, he submits that if he is not permitted to serve as the Mayor of the Municipal Corporation, Chandigarh, for the entire span of 12 months, therebys the supra statutory provisions would become purposeless.

(III). He strengthens the above argument through his resting them, on the provisions which occur respectively in sub-Sections (3) and (4) of Section 38 of the Act of 1976, provisions whereof already become extracted hereinabove. Readings of sub-Section (3), though make detailings about the occurrence of “any casual vacancy in the office of the Mayor”, whereupons the Corporation becomes enjoined to, within one month, from the

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occurrence of “such a casual vacancy”, thus elect the concerned to the respective offices concerned, but the so elected concerned is detailed to hold office against the post concerned, rather only for the remainder of his predecessor’s term in office, but after subtracting the term spent in office by the predecessor concerned.

(IV). However, the learned counsel for the petitioner argues, that since the present petitioner was elected as such under the orders of the Hon’ble Supreme Court, after the Apex Court annulling the results of the elections conducted on 30.01.2024, whereby Mr. Manoj Sonkar was elected as the Mayor of the Municipal Corporation, Chandigarh, thereby since the said setting aside of the election of Mr. Manoj Sonkar under the orders of the Apex Court, thus, happened on 20.02.2024. Resultantly, thereby the said made apposite annulments, do become related back to the date when the apposite first meeting was convened, inasmuch as, it relates back to 30.01.2024.

(V) As such, he argues that thereby the provisions as occur in Section 2(5) of the Act of 1976, provisions whereof become extracted hereinafter, when only cover a situation, whereby upon arousal of casual vacancies, which are defined to cover a vacancy which occurs otherwise than by efflux of time, thus covering a situation which becomes aroused through makings of resignations or through a verdict, thus, declaring the elected person to incur any statutory disqualification, whereas the supra situation is not the situation at hand. Resultantly, he fortifyingly submits that on applying the supra doctrine of relating back, the present petitioner is required to be endowed to function as a Mayor for the full span of 12 years

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to be counted from 30.01.2024:-

“(5) “casual vacancy” means a vacancy occurring otherwise than by efflux of time in the office of a councillor or in any other elective office;

(VI). In other words, he submits that once the elections of the earlier elected Mayor, thus, became quashed and set aside, as such, the instant vacanc(ies) as has occurred, thus, cannot be deemed to be a vacancy which arose otherwise than by efflux of time. Resultantly, he submits that since Mr. Manoj Sonkar, did not become declared to suffer any statutory disqualification, but when his elections to the seat of the Mayor, thus, were quashed and set aside, as such, the time spent by him as a Mayor, becomes completely awashed, through the supra verdict becoming made by the Apex Court, whereupons reiteratedly, the said apposite quashing order, appertaining to the taintedly declared result vis-a-vis Mr. Manoj Sonkar, relates back to the first convened meeting i.e. 30.01.2024, wherein, Mr. Manoj Sonkar was declared illegally elected and the Apex Court, after making counting of votes, declared the present petitioner to be the validly returned candidate to the seat of the Mayor.

(VII) In sequel, he submits that also in terms of sub-Section (4) of Section 38 of the Act of 1976, thus with the mandate enclosed therein, qua if a person becomes elected to a casual vacancy, thus is to serve only for the remainder of the term as becomes left for effective functionings, against the seat of Mayor, thus, does not cover the instant situation.

(VIII) Tritely, he submits that since one Mr. Manoj Sonkar, who became elected to the office of the Mayor, through an ill-declared result

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erupting from a convened meeting held on 30.01.2024, and who however, became unseated through orders rescinding his elections, thus, becoming made made by the Apex Court. As such, when Mr. Manoj Sonkar did not ever effectively serve as the Mayor of the Corporation. Therefore, he submits that with no effective term as a Mayor becoming served by Mr. Manoj Sonkar. In sequel, if any apposite term, as such, became served by him, but yet the said term not being amenable to be substracted nor becoming reduced from the term of 12 months, to be servable by the present petitioner. Especially when the declaration of results as became initially made vis-a-vis Mr. Manoj Sonkar, became ultimately quashed and set aside by the Apex Court and, when to the supra made orders, thus the doctrine of theirs relating back to 30.01.2024, thus has been applied, but with the consequent effect that the present petitioner was to commence the apposite 12 months for his serving as a Mayor, but reckonable from 30.01.2024.

(IX) Resultantly, also when the said elected Mayor did not, serve for any duration of time, more so, when his resignation as made against the said seat became declined, as such, there was no residue left for the present petitioner, thus from any purported residual term or the apposite remainder of the term, which lawfully fell to the share of one Manoj Sonkar. Therefore, he most fortifyingly submits that the full length of one year to effectively function as a Mayor has to be assigned to the present petitioner, and that the same can occur only when he is permitted to complete his term on 30.01.2025.

X. Learned counsel for the petitioner though has fairly conceded that there is consistency of law to the effect that once an election programme



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has been set into motion, thereby it cannot be interfered with. Even the said fact is spoken with utmost clarity in the judgment rendered by the Apex Court in the supra SLP.

28. STATUTORY BREACHES WHICH MAKE THE ANNOUNCED ELECTION PROGRAMME TO BE INTERFERED WITH

I. Be that as it may, to the considered objective mind, of this Court, there may be an exception to the said Rule, inasmuch as, upon the noticeable emergencies qua palpable statutory breaches being made at the instance of the respondents. Learned counsel for the petitioner argues that the said statutory breaches become comprised in the hereinafter reproduced resolution becoming passed by the Municipal Corporation, Chandigarh:-

“The House unanimously approved that the Regulation 6 of the Chandigarh Municipal Corporation (Procedure and Conduct of Business) Regulations, 1996 be amended and the elections for the posts of Mayor, Senior Deputy Mayor and Deputy Mayor be conducted by means of show of hands.”

II. He submits that the said passed resolution becomes covered within the ambit of Section 398 of the Act of 1976, provisions whereof becomes reproduced hereinafter:-

“398. (1) Any regulation which may be made by the Corporation under this Act, may be made by the Government within one year of the establishment of the Corporation; and any regulation so made may be altered or rescinded by the Corporation in the exercise of its powers under this Act.



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(2) No regulation made by the Corporation under this Act shall have effect until it has been approved by the Government and published in the official Gazette.”

III. A reading of the supra extracted provisions reveal, that since the affairs of the Corporation are to be governed by well-conceived regulations, therebys the regulations, which are as such to be made for or by the Municipal Corporation concerned, rather under the Act of 1976, thus, become permitted to be so made by the Government, but within one month of the establishment of the Corporation. Moreover, any alterations or rescindings theretos, thus, is also an empowerment, which becomes endowed upon the Corporation in the exercise of the powers conferred upon it under the supra Act.

IV. Furthermore though sub-Section (2) of Section 398 of the Act of 1976, makes expressions, that the apposite regulations as made in the exercise of powers conferred under sub-Section (1) of Section 398, thus shall have effectivity, but only when they become approved by the Government and also become published in the official Gazette.

V. However, he submits that the supra resolution yet acquires effectivity became granted thereto by the appropriate Government. The reason which he advances for the said submission becomes banked on the factum that since the supra resolution, does *ex facie* rescind and alter the earlier method for conducting the elections to the seat of Mayor, thus, from secret voting being done, rather through the mode of ‘raising of hands’ becoming adopted. As such, the said change or rescission, is stated, by him

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to promote transparency in the conducting of elections, especially when the earlier adopted mode of polling by 'secret ballot' did not beget any transparency, rather the same became abused, and when the said abuse also resulted in the Apex Court rescinding the earlier conducted elections, wherebys Mr. Manoj Sonkar was illegally elected as a Mayor.

VI. In short he submits that the incipiently made regulations which occur in the first segment of sub-Section (1) of Section 398 of the Act of 1976, do fall within the domain of sub-Section (2), wherebys thereto only, an approval is to be made by the Government and also the said incipiently made regulations are to be published in the official Gazette. However, vis-a-vis the second segment or qua the second part of sub-Section (1) of Section 398, wherebys the spoken therein alterations or rescissions by the Corporation in the exercise of its powers under the Act of 1976, when thus, are made therebys to such alterations or rescissions, rather the provisions of sub-Section (2) are not applicable nor therebys the said made alterations or rescissions to the incipiently formulated regulations, do require any approvals thereto becoming meted by the Government nor require that they become published in the official Gazette.

VII Learned counsel for the petitioner supports the supra submissions through his making an allusion to Section 65 of the Act of 1976, provisions whereof becomes extracted hereinafter:-

“65. The Corporation may make regulations for the transaction of business at its meeting and at the meetings of its committees and the manner in which notice of such meetings shall be given:

Provided that the time, place and procedure for the first



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meeting after the constitution of the Corporation under section 4 shall be determined by the Divisional Commissioner.”

VIII. He submits that since the supra investment of powers in the Corporation, are unrestricted or untrammelled through the non-occurrence therein of a condition which otherwise occurs in sub-Section (2) of Section 398 of the Act of 1976, thereby, the supra interpretation afforded by him to the non-necessity of any approval being granted to the apposite alteration, whereby (a) the earlier envisaged mode of conducting elections through ‘secret ballots’, (b) became replaced by ‘open raising of hands’, when thus falls in alignment therewith. Resultantly, on making a harmonious reading of the unfettered powers vested in the Corporation, through Section 65, thus with the purported second part of Section 398, thereby the said powers are to extend to the supra second segment which occurs in sub-Section (1) of Section 398 of the Act of 1976.

29. **SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENTS**

I. On the other hand Shri Chetan Mittal, Senior Advocate, Shri Amit Jhanji, Senior Advocate, Shri Sanjiv Ghai, Advocate, Shri Sumeet Jain, Advocate, though do not contest the vigor of the submission appertaining to the fact that the first convened meeting of the elected Councillors of the Municipal Corporation, Chandigarh, was held on 30.01.2024. Moreover, they also do not contest that in the said convened meeting, the elections to the seat of Mayor became conducted, whereby Mr. Manoj Sonkar was elected as a Mayor, as the said year was the apposite third year in the five year tenure of the Municipal Corporation, whereupons

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the seat of Mayor fell to the Scheduled Caste category to which Mr. Manoj Sonkar belonged.

II. However, they contest the vigor of the submissions made before this Court by the learned counsel for the petitioner, that the supra made apposite rescindings through the supra made resolution, are competently made alterations to the supra mode, rather to be employed for conducting elections to the seat of Mayor, inasmuch as, the earlier mode was through casting of 'secret ballots' and the same becoming through the defective resolution supra, thus becoming substituted through the 'open raising of hands'.

III. In the said regard, they submit that the counsel for the petitioner has impermissibly segregated sub-Section (1) from sub-Section (2) of Section 38 of the Act of 1976. They support the said submissions through theirs arguing, that once the initial regulations appertaining to the Corporation when are to be accorded approval, besides are to be notified by the competent authority, but yet when the alterations or amendments thereto, are yet permitted to be *suo motu* made by a resolution passed by the majority of the elected Councillors, as has been done in the instant case. Resultantly, they argue that therebys the expanse and plenitude of sub-Section (2) of Section 398, but would suffer a consequent impermissible truncation, which otherwise the legislature did not so intend, besides thus would beget impermissible limitation vis-a-vis the effectivity of its coverage to the entire width of the provisions as encapsulated in sub-Section (1) of Section 398 of the Act of 1976.

IV. They further submit, that in case the legislature intended to

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restrict the operation of sub-Section (2) to the purported first and second segments of sub-Section (1) of Section 398, thereby such an expressive explicit language, was to exist in sub-Section (2) or through a proviso underneath sub-Section (2). Since the said do not exist, thereby the envisagings in sub-Section (2) do cover (a) the incipiently made regulations, (b) also the alterations or rescissions made thereto, (c) thereby both require approval theretos becoming granted by the Government and also such rescissions and amendments becoming required to become published in the official Gazette.

V. They further submit that the provisions as embodied in Section 65 supra, only cover a situation, limited to the aspect of permissibility being endowed to a Corporation to transact its business at its meetings, and at the meetings of the Committees, besides covers a situation, vis-a-vis the manner in which the notice of such meetings shall be given. Therefore, the supra statutory methodology when specifically covers the said specifically contemplated statutory situation(s), which but are different to the makings of alterations or rescindings, as instantly made by the resolution passed by majority of the House of the Councillors, to the earlier mode of conducting secret elections to the seat of the Mayor, to the one as now proposed to be done through the 'open raising of the hands', when falls within the domain of sub-Section (1) and sub-Section (2) of Section 398 of the Act of 1976. As such, when the said supra situation, when becomes contemplated in a different statutory provision than Section 65 supra, besides in a separate/distinct thereto regulation. Therefore, when the present situation is pointedly covered within the scope of Regulation 6 (12) supra, which

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contemplates the conducting of apposite elections through ‘secret ballot’. Therefore, the said supra regulation with the supra contemplation, was required to be altered in the same manner as the supra regulation with the supra contemplation, thus became initially formulated. Since the supra regulation joined the statute book, through the exercise of subordinate legislation, whereto approval became granted by the competent Government, besides the same became published in the official Gazette, as such, any amendment thereto did reiteratedly require that a similar procedure becomes re-employed.

VI. In consequence, the learned counsels reiteratedly argued, that the mere passing of resolution supra, in purported exercise of powers vested in the Corporation, purportedly through the purported second segment of sub-Section (1) of Section 398, thus, falls within the domain of sub-Section (2) of Section 398 and, as such, did also require an approval thereto becoming granted by the State Government and by the competent authority and also the same required publications thereof being made in the official Gazette.

VII. The learned counsel supra also contend with much vigor before this Court, that there would be but a reduction in the tenure of the Mayor to be now chosen by the electoral college concerned, who however, now is to be chosen from the women category, as the current year is the fourth year in the five year tenure of the Corporation, and in the said year, the reservation against the seat of Mayor, thus, is to be made in favour of a lady candidate/or from the women category. The supra counsel also contend that even if there is any purported vitiation caused to the notification supra,

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inasmuch as, to the extent that though the Divisional Commissioner, Chandigarh, has aptly designated the prescribed Presiding Authority or the Presiding Officer to be one Mr. Ramneek Singh Bedi, but yet when the said appointed Presiding Officer or the Presiding Authority, was in terms of, hereinafter extracted provisions of Regulation 6(12) of the apposite Regulations, rather was empowered to make countings of the votes, but with the assistance of the Municipal officials or employees as appointed or designated by the Presiding Authority supra. However, the said empowerment vested in the supra Presiding Authority, though may have been yet usurped by the Divisional Commissioner, through his, in the impugned notification, appointing such other officials/officers of the Corporation, thus to assist and aid the supra Mr. Ramneek Singh Bedi, the appointed Presiding Authority, in the counting of votes, and also in his conducting the elections to the seat of the Mayor of the Municipal Corporation, Chandigarh. However, they submit that the said is but a minimal transgression which is to promote transparency and thereby does not vitiate the announced election programme.

30. **FURTHER CONTENTIONS OF LEARNED COUNSEL FOR THE PETITIONER**

I. Learned counsel for the petitioner contends that in case the impugned notification is assigned credence, thereby the hereinafter extracted Regulation 6 (12) of the Regulations, would become breached. The said submission has a striking effect, that though thereby the Divisional Commissioner aptly designated one Mr. Ramneek Singh Bedi, as the Presiding Authority to make countings of the votes, but since the supra was



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the sole repository of a further jurisdiction to appoint such officials/officers as he deems fit to assist him in the process of counting votes, besides in the process of conducting elections to the seat of the Mayor. However, yet the said invested empowerment in Mr. Ramneek Singh Bedi, has been usurped by the Divisional Commissioner, through his, in the impugned order appointing officers of the Municipal Corporation to aid and assist Mr. Ramneek Singh Bedi, thus in the latter conducting elections and also his making the counting of votes. The said usurpation has caused deep pervasive vitiations to the hereinafter extracted regulation, thereby it is submitted that, as such, the said is an exception to the general rule, that there can be no tinkering in the election programme once the same takes off. The provisions of Regulation 6 of the Regulations becomes extracted hereunder:-

“(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”

31. **REBUTTAL TO THE ABOVE BY THE LEARNED COUNSEL FOR THE RESPONDENTS**

I. Learned counsel for the respondents submit that there may be a purported vitiation vis-a-vis the supra Regulation 6(12), but it is intended towards ensuring transparency in the conducting of elections.

32. **REASONS FOR PARTLY ACCEPTING THE SUBMISSIONS OF THE LEARNED COUNSEL FOR THE**

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**PETITIONER**

I. For all the reasons to be assigned hereinafter, this Court partly accepts the submissions of the counsel for the petitioner, to the extent, that through notification supra, there is a breach caused to the provisions of Regulation 6(12). Moreover, this Court also accepts the submissions addressed before this Court, that the date of declaration of results, vis-a-vis the present petitioner, thus emanates from the Apex Court, through its annulling and quashing the elections, as became conducted in a meeting held on 30.01.2024, wherebys one Mr. Manoj Sonkar was illegally elected as a Mayor, whereupon 30.01.2024 becomes the material reckoning date, for therefroms, this Court concluding that the present petitioner is to run a complete full year. The said conclusion would fall in alignment with the mandate enclosed in the proviso to Section 38 of the Act of 1976.

THIS COURT ALSO ACCEPTS

II. This Court also partly accepts the submissions addressed before this Court by the learned counsel supra, appearing for the respondents, but only to the extent that the resolution supra as made in terms of the purported second segment of Section 398 (1) of the Act of 1976, does require an approval thereto becoming granted by the competent authority, besides required the same being published in the official Gazette. Apparently, through the said passed resolution, there is an alteration to the earlier adopted mode for conducting elections to the seat of Mayor, inasmuch as, the earlier mode prescribing the casting of votes through 'secret ballots',

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whereas, the said being substituted through 'open raising of hands'. The reasons for stating so, are *inter alia*, founded on the hereinafter premises:-

(a) Though undisputedly the term of the Corporation, in consonance of the supra constitutional provisions, is not to extend beyond five years. However, the proviso which exists under sub-Section (1) of Section 38 of the Act of 1976, is also to be assigned the fullest effectivity. Therefore, since the said proviso makes graphic echoings to the extent that since in the third year, the seat of the Mayor was reserved for the Scheduled Caste category, who is the present petitioner. Resultantly, with the makings of the supra contemplations in the said proviso, but obviously therebys the apposite years', as such, is/are to be comprehended to be acquiring the meaning, that it/they i.e. the elected concerned, thus becoming permitted to run the complete span of 12 calendar months, unless it is so shortened, upon the dissolution of the Corporation, taking place through invocation by the Administrator vis-a-vis the powers vested in him through Section 407 of the Act of 1976.

(b) The said dissolution has not taken place. Contrarily, as apparent on the reading of the table placed on record by the counsel concerned, that even on earlier occasions, there were extensions *vis-a-vis* the tenure of the previously elected Councillors against the seat of the Mayor. Though, the said extensions may not be completely vindicable by this Court in terms of the provisions embodied in sub-Section (3) of

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Section 38 of the Act of 1976, provisions whereof already become extracted hereinabove, especially when the longevity of the term of the previously elected Mayor, thus was not to extend beyond one year.

(c) Importantly therebys also, the argument as raised by the counsels appearing for the respondents that the present petitioner, is to run only the apposite remainder of the term as left for his functionally serving as the Mayor of the Municipal Corporation, besides the further argument that the said term is to be subtracted from the span of 12 months, are both arguments which are bereft of vigor and are rejected.

III. The reason for so stating also ensues from the factum, that the relevant reckoner is the date of the convening of the first meeting in the year concerned. Resultantly, when the first meeting, in the instant case, did take place on 30.01.2024, and though in the said convened meeting dated 30.01.2024, Mr. Manoj Sonkar was declared elected, but since the elections of Mr. Manoj Sonkar against the seat of Mayor became quashed and set aside by the Apex Court. As such, the quashing of the declaration of results as made vis-a-vis Mr. Manoj Sonkar, in the convened meeting held on 30.01.2024, but is obviously to be relating back to the date when the elections so were conducted in the supra convened first meeting. Therefore, the present petitioner is to complete the tenure of 12 calendar months commencing from 30.01.2024.

IV. In other words, since in the makings of the supra inference, therebys the supra made dependence, thus is made, but naturally the said

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made dependence hence becomes a well made dependence i.e. on the said verdict rendered by the Apex Court over the supra SLP, wherein, the Apex Court in the exercise of its extraordinary constitutional powers invested under Article 142 of the Constitution of India, has after making recountings, thus has thereafter declared the results, whereby the present petitioner has been declared to be elected to the seat of Mayor, besides when the earlier declaration of results became quashed and set aside.

V. The further effects of the said inference, but is that when Mr. Manoj Sonkar, but naturally did not effectively ever functioned as a Mayor, thereby the term when he ineffectively or incompetently functions, as a Mayor in the Municipal Corporation, this is not to be subtracted from the span of 12 calendar months which is required to be spent as a Mayor by the present petitioner.

VI. Naturally therebys, the provisions which occur in Section 2(5) of the Act of 1976, which define 'casual vacancy', to mean a vacancy occurring otherwise than by efflux of time in the office of a Councillor or any other elected officer, thus, when become read with sub-Section (3) of Section 398 of the Act of 1976, which permits, that upon arousal of such a casual vacancy, would beget the result qua the occupier to the seat of Mayor, rather being permitted to, only to run the remainder of the term, thus, is not applicable to the instant case. The reason for so stating is borrowed from the factum, that in the instant case, there is no casual vacancy to the seat of Mayor, which would otherwise occur only when Mr. Manoj Sonkar was declared to incur a statutory disqualification. Since Mr. Manoj Sonkar has not been declared to incur a statutory disqualification but when his elections

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to the seat of Mayor were annulled by the Apex Court, resutantly therebys, neither sub-Section (4) of Section 398 is attracted nor obviously upon the unseatings of Mr. Manoj Sonkar from the seat of Mayor taking place, and his becoming replaced by the present petitioner, thus reiteratedly, is not a casual vacancy nor can in anyway limit the span of 12 months which the present petitioner is to effectively function as a Mayor of Municipal Corporation, Chandigarh.

VII. Otherwise also the meaning to be imparted to a casual vacancy is none other than the said casual vacancy becoming aroused from the resignation of the elected Mayor, or on occurrence of his death or his becoming lawfully removed, from the office, through recoursings being made to the apposite statutory mechanism as contemplated for the said purpose in the special statute. Since, Mr. Manoj Sonkar though did resign, but when the resignation became not accepted, rather when his elections were quashed and set aside under supra orders, therebys when through invoking the doctrine of relating back, to the extent qua the said quashing relating back to the ill-declaration of results made vis-a-vis Mr. Manoj Sonkar. As such, therebys also there was no casual vacancy created nor the remainder of the term, if any, served thus was to be subtracted from the span of 12 months to be spent by the present petitioner as a Mayor of the Municipal Corporation, Chandigarh.

VIII. The further effects of the said inference is that therebys the purposive legislative intent in the incorporation of the proviso under Section 238, but would be satiated/enlivened, inasmuch as, with a contemplation therein that for the relevant year i.e. the third year, in year whereof, the post

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of Mayor was reserved to the Scheduled Caste category and whereto, as stated supra, the present petitioner was declared elected by orders rendered by the Apex Court, besides theretos the benefits thereof would accrue to the present petitioner. As such, thereby the present petitioner is required to be functionally serving as a Mayor of the Municipal Corporation, Chandigarh, for the full span of 12 calendar months, to be reckoned from 30.01.2024. If the said tenure is curtailed though this Court affirming the instant notification, thereby the present petitioner would be debarred from functionally working as Mayor of the Corporation, besides thereby the otherwise fullest effectivity, to become galvanized by the supra statutory provision, rather would become balked, besides would become frustrated, which would be grossly impermissible.

33. **REASONS FOR REJECTING THE SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER**

I. For the reasons to be assigned hereinafter, the submission addressed by the learned counsel for the petitioner that the resolution supra passed by the majority of the House of Councillors, did not require any approval thereto becoming granted by the competent authority nor requiring publication, is rejected:-

(a) The prime reason for stating so is also similarly planked upon the supra submissions addressed before this Court by the learned counsel for the respondents. Since to the said submissions, no worthy reply became made by the counsel for the petitioner, thereby the submissions addressed by the learned counsel for the petitioner are rejected. Even otherwise,

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as stated supra, there cannot be any restriction to the otherwise plenitude of powers invested in the competent authority to both (a) in respect of incipiently made regulations, (b) in respect of amendments or rescissions thereto being made, thus, endow validity theretos through both becoming granted approval by the competent authority and subsequently becoming published in the official Gazette. If the said restrictions were intended to be created, therebys the said restrictions were to be specifically spoken in sub-Section (2) or through a proviso embodied thereunders. Since, there is/are no restrictions through employment of supra modes to the plenitude of empowerment vested in the competent authority, to even when alterations or rescindings, are made to the incipiently formulated regulations, thus, ensure that approvals thereto are made besides ensure qua the said regulation becoming published in the official Gazette. Resultantly, the amendments or rescissions as made thereto, thus, do concomitantly require similar approvals, besides similar publications, as are statutorily enjoined to be made to the incipiently formulated regulations.

(b) If the said is not insisted upon, thereupon this Court would be creating an unnecessary fetter or limitations vis-a-vis, the otherwise plenitude of jurisdiction invested in the competent authority, through the provisions which occur in sub-Section (2) of Section 398, which but covers all the earlier spoken envisagings in sub-Section (1). Moreover, therebys this Court

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would be impermissibly legislating, whereby this Court would be entering into the domain of the legislature.

(c) The provisions of supra Regulation 6, with contemplations that the voting shall take place through 'secret ballots', when is proposed to be altered to the extent that the apposite elections taking place through 'open raising of hands', thus through the passing of the supra resolution, but on the pretextual ground that the same is in terms of Section 65 and also when it purportedly falls in purported second fragment of Section 398, yet the said submissions are rudderless and become rejected.

II. Though Section 65 supra empowers the Corporation to frame regulations for the specifically ordained purposes, purposes whereof when do not cover the instant situation. Contrarily, when the instant situation becomes covered by Regulation 6 supra. Resultantly, when Regulation 6 supra is brought on the statute in the exercise of delegated legislation, thereby any alteration thereto but is to be also made in the manner alike the one whereby the supra regulation joined the statute book, and than through the passing of a mere resolution. In other words, the scope of Section 65 only covers a situation when there are no corresponding rules in respect of the matters detailed therein. However, when the rules supra specifically cover the instant situation, thereby when the said rule is made in the exercise of subordinate legislation, thereby in the makings of rescission or alteration theretos, but required that the mode similar to the said rule/regulation joining the statute book was to be re-employed. Resultantly, thereby also the supra argument raised by the counsel for the petitioner, that

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there are two compartments in sub-Section (1) of Section 398 and that since the instant alterations are made to the incipient regulations, besides when the said alteration falls in the purported second segment of Section 398(1) of the Act of 1976, thus, but obviously runs counter to a specific Regulation 6, which is rather proposed to be untenably altered by learned counsel for the petitioner through the supra passed resolution. Moreover, if the said argument is accepted, it would run counter to the manner of incorporating of rules of business which are, in the instant case, so brought on the statute book, through incorporating therein Regulation 6 supra, through the exercising of the powers of delegated legislation, than through the mere passing of a resolution.

III. Though, the learned counsel for the respondents contend that the infirmity supra, which occurs in the impugned notification, inasmuch as, the power of the Presiding Officer one Dr. Ramneek Singh Bedi, becoming snatched, through the Divisional Commissioner appointing the officers/officials therein, to appositely aid and assist him, but they attempt to validate the same, on the ground that the same was done, thus only for ensuring the conductings of transparent, fair and taint-free elections to the seat of the Mayor of the Municipal Corporation, Chandigarh. Though, the said argument appears to be impressive on its facade but yet loses its sheen, especially when the provisions embodied in Regulation 6(12) become neither successfully challenged nor obviously the vires thereof becomes set aside. Therebys the rigor of the supra mandatory statutory language employed in the said rule is to be assigned the fullest effectivity, given the same reiteratedly being couched in mandatory statutory words.

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IV It is but the said pervasive defect ingraining the impugned notification, that constitutes valid and weighty reasons, thus, for this Court concluding that, thereby there is also a permissibility for this Court, to somehow tinker with the announced election programme, besides to depart from the expositions of law, rather interdicting writ Courts to in the exercise of extraordinary writ jurisdiction, thus, make any interference with the announced election programme, which in the instant case, is relating to the conducting of indirect elections, by the strength of the electoral college to the seat of the Mayor in the Municipal Corporation, Chandigarh.

34. All the above inferences drawn by this Court, are maneuvered towards also ensuring that, thereby both the constitutional endowments of reservations being made to the Scheduled Caste candidate and the consequent thereto endowments made in terms of the proviso under Section 38 of the Act of 1976, with a clear spelling therein, that in the respective years, the detailed therein reservations, but had to be created in favour of the categories detailed therein, excepting the first and the fifth year, especially also when the said years are to be holding a signification, none other than theirs lasting upto, their complete duration of 12 calendar months, thus thereupon becoming becoming fully rejuvenated. As such, if the instantly declared election programme through the impugned notification, is permitted to be upheld, thereby there would be an impermissible reduction and decimation in the tenure of one year, as becomes endowed in terms of proviso, vis-a-vis the present petitioner, to effectively function as the Mayor of the Municipal Corporation, Chandigarh.

35. In the meantime, the Administrator of the Union Territory,

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Chandigarh, given the Apex Court, earlier in the verdict supra, noticing glaring electoral malpractices being committed by the Supervising Officer concerned, in respect of secretly polled ballot papers, thus, is requested to consider that the supra resolution, thus, proposing to make amendments and modifications to the Regulation 6(6), whereby there is permissibility to members of the electoral college to cast vote through 'raising of hands', in substitution to the earlier mode of casting of vote through 'secret ballots', thus becomes considered to be ratified, approved and also becomes considered to be subsequently published in the official Gazette.

36. With the aforesaid observations, the instant writ petition stands disposed of. The impugned notification is quashed and set aside and the respondents are directed to permit the present petitioner to function as Mayor of the Municipal Corporation, Chandigarh, uptill 29.01.2025, and in the interregnum, in terms of the supra observations, thus, the respondents may redraw an election programme, thus, for conducting indirect elections to the seat of the Mayor of the Municipal Corporation, Chandigarh. However, the elections to the post of the Mayor be conducted only post the present petitioner completing his tenure against the seat of Mayor, tenure whereof, is to last uptill 29.01.2025.

(SURESHWAR THAKUR)
JUDGE

JANUARY 20, 2025

d.gulati

(VIKAS SUR)
JUDGE

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