

(1960) 02 AHC CK 0012**Allahabad High Court****Case No:** Civil Miscellaneous Application No. 2044 of 1957

Rati Ram

APPELLANT

Vs

S.D.O., Budhana and Another

RESPONDENT

Date of Decision: Feb. 26, 1960**Acts Referred:**

- Constitution of India, 1950 - Article 226

Citation: AIR 1960 All 550**Hon'ble Judges:** V.D. Bhargava, J**Bench:** Single Bench**Advocate:** J.N. Chaterji, for the Appellant; Standing Counsel, for the Respondent**Final Decision:** Dismissed**Judgement**

@JUDGMENTTAG-ORDER

V.D. Bhargava, J.

This is an application by Rati Ram, who was a candidate for the Pradhanship of the Gaon Sabha of Nala, Pargana Kandhla, Tahsil Budhana, District Muzaffarnagar. The election took place in December 1955. The petitioner and the opposite party No. 2 were the contesting candidates. The petitioner is alleged to have secured 1213 votes as against 830 votes secured by Girwar Singh. The petitioner was declared elected. Thereafter, opposite party No. 2 filed an election petition before the learned Sub-Divisional Officer, Budhana, u/s 12-C of the U. P. Panchayat Raj Act alleging that the votes were secured by intimidation and by resort to bribery by the petitioner.

The election was challenged also on the ground that a supplementary list drawn up at the last moment, by which 250 voters were added, had been acted upon and no opportunity was given to the petitioner for scrutinising the same or for informing the voters to vote for him. These allegations were denied by the petitioner, but the election petition was allowed. The Sub-Divisional Officer held that there was no bribery and intimidation but these facts have been wrongfully added and, therefore,

a fresh election was ordered.

A fresh election took place on 20-8-1955, in which the petitioner filed his nomination paper and there was one Banwari Singh who also filed his nomination paper. Banwari Singh was declared elected. After the second election this petition was filed in this Court and a stay order was obtained to the effect that the order of the Sub-Divisional Officer dated 25-6-1955, setting aside the petitioner's election as Pradhan be stayed. Thereafter, a counter affidavit was filed on behalf of Banwari Singh stating that before the petition was filed in this Court fresh election had already taken place and he had been elected. On behalf of the opposite party it has been alleged that there had been a suppression of fact because when on the 27th of August, 1957, the petition was filed the election had already taken place and it was the duty of the petitioner to have informed the Court about the second election. On behalf of the petitioner it was alleged that this affidavit was sworn on the 1st of July, 1957, and, therefore, the affidavit, when it was sworn, was correct and there was no deliberate suppression of facts. It may be that the counsel was not informed and, therefore, he was acting bona fide when he moved the petition, but all the same it was the duty of the petitioner to inform his counsel at Allahabad when election had taken place and till that time no stay order had been communicated to him.

If the petitioner took his chance at the second election without any objection having been filed in this Court by means of a writ petition, I do not think now the petitioner can ask the first election to be restored. If once a party acquiesces in a certain manner or conduct to the jurisdiction of an authority who may not have the jurisdiction, then thereafter he cannot be allowed to challenge the authority or otherwise of the proceedings to which he had acquiesced. In Pannalal Binjraj Vs. Union of India (UOI), at p. 412 their Lordships of the Supreme Court have said:

"If they acquiesced in the jurisdiction of the Income Tax Officers to whom their cases were transferred, they were certainly not entitled to invoke the jurisdiction of this Court under Article 32. It is well settled that such conduct of the petitioners would disentitle them to any relief at the hands of this Court."

2. I think here in the present case since the petitioner had taken his chance in the election without any objection he was not entitled to present the petition thereafter. If he wanted to challenge the validity of the order of the Sub-Divisional Officer he should have come to this Court before the second election and asked for the restoration of the first election. Then in that event the second election would have been subject to the decision of the writ petition, but as in the present case the second election had taken place without any objection on behalf of the petitioner that election wipes out entirely the first election. The petition is accordingly dismissed, but in the circumstances of the case I make no order as to costs.