

(1989) 05 PAT CK 0013
In the Patna High Court
Case No : C.W.J.C. No. 1064 of 1989

Premlata Roy and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 04-05-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1989 Patna 331 : (1989) PLJR 959

Hon'ble Judges : S.B. Sanyal, J; R.N. Lal, J

Bench : Division Bench

Judgement

1. In this application the petitioners seek issuance of Writ of mandamus directing the Respondents to consider the case of the petitioners for admission in the Teachers Training College for Women for the Session 1988-90.
2. According to the petitioners, they applied for their admission alongwith photostat copies of their marks and all other documents as per the requirement for admission but curiously persons who obtained lower marks were admitted in the College, and the petitioners were left out as would be evident from Annexure-3 of the writ petition.
3. According to the petitioners case they were married in the year 1985-86 in the district of Vaishali, which is their husband's home. As per the Government decision, the husband's home is the place of residence of their wives. In the counter-affidavit, filed on behalf of the State, it is not denied that the petitioners did not obtain higher marks than many of the candidates who have been admitted in the Training College, but the reason for non-consideration of the case of the petitioners, as disclosed in the counter-affidavit is the application forms did not accompany residence certificate. Supplementary affidavit on behalf of the petitioners has also been filed wherein it has been stated that apart from filing the residential certificate along with the application form, other accompanying papers showed the address of the in laws as also the place from where applications were sent. The petitioners have subsequently come to learn that the

residential certificate attached to the application form got detached in the office. This the petitioners contend has been willfully made at the instance of interested person in order to defeat their claim for admission.

4. Having considered the arguments of the learned counsel for the parties we are of the opinion, if any application for admission is filed which is lacking in some particulars or enclosures, the authorities have to bring this fact to the notice of the candidate and such person must have an opportunity to remove the said defect before consideration of his application for admission and/or admission ordered may be subject to the production of the certificate or removal of the defect at the time of actual admission. If this opportunity is not provided as candidate who is likely to be selected, his rights may be defeated by unscrupulous people or by such mysterious hand in the office of the Institution by detaching the enclosures from the application form. This situation may also arise by mishandling of mass of applications, and enclosures may get detached inadvertently, thus causing grave injury to the persons concerned.

5. It is not possible for us to investigate as to what happened in the instant case. There is no special column in the form for indication by the candidate as to what documents have been enclosed with the application form. The residential certificate might or might not have been enclosed, with the application form. We are however, of the opinion that a person has a right to remove the defect in the application form before its consideration. He or she must have notice of the defect. The norms if any laid down that the application form may be rejected in absence of enclosures have to be treated as directory, subject to an opportunity to remove the defect prior to the final consideration of their case.

6. In the instant case the petitioners were never given an opportunity to produce the residential certificate or an opportunity to rectify the application form and as a matter of fact the petitioners claim to have the residential certificate, obtained by them much before filing of the application form. The petitioners, must be given an opportunity to produce the said certificate.

7. Before parting with this case, we do like to state that state or executive action must manifest fair play and likelihood of mischief reduced to minimal. The modalities to be adopted to achieve the said is however for the authorities to decide. Principle of fair play is not a straight jacket but has many facades all directed to achieve only one and i.e. justice.

8. We direct the petitioners to produce the residential certificate by 30th of May, 1989 and if it is so produced the authorities shall consider their case bearing in mind Cl. KA(GA) of Annexure "A" dated 2-5-88.

9. With this observation the Writ application is disposed of.

10. Let a copy of this order be given to the State counsel,