

**(2011) 01 CAL CK 0060**

**Calcutta High Court (Port Blair Bench)**

**Case No:** Writ Petition No. 1160 of 2010

A and N Islands Integrated  
Development Corporation Ltd.  
and Another

APPELLANT

Vs

Regional Provident Fund  
Commissioner-I and Others

RESPONDENT

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**Date of Decision:** Jan. 25, 2011

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 7I

**Citation:** (2011) 129 FLR 375 : (2011) 4 LLJ 141

**Hon'ble Judges:** Sanjib Banerjee, J

**Bench:** Single Bench

**Advocate:** Anjili Nag, for the Appellant; S. Karmakar, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Sanjib Banerjee, J.

The short point that has been taken in the writ petition and urged at the hearing is that the Provident Fund Authorities applied the provisions of the Central Public Works Department (CPWD) Manual in relation to the first writ Petitioner without the first writ Petitioner being made aware thereof. The writ Petitioners suggest that since the Provident Fund Authorities are, in a sense, the complainant and the arbiter, the slightest violation of the principles of natural justice must be guarded against.

2. On behalf of the Respondent authorities, it is submitted that in view of the Section 7-I of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, the order challenged in the present proceedings should have been carried by way of an appeal to the appropriate forum and not made the subject-matter of a writ petition.

3. Though such challenge on the ground of there being an alternative remedy is sought to be repelled on behalf of the writ Petitioners on the argument that an appeal entails a statutory pre-deposit which renders the remedy illusory; that can not be a good enough reason for not preferring an appeal and carrying the challenge under Article 226 of Constitution. An appeal is not an inherent right but is a creature of statute. If the statute can confer a benefit, such benefit may be tinged with any condition imposed.

4. However, it is the more fundamental basis on which the impugned order is challenged that would not warrant this petition to be rejected on the ground of there being an alternative remedy. The Petitioners say that they were not made aware of the application of the provisions contained in the CPWD Manual in relation to their conduct. It does not appear to be evident on the basis of the records now available, that the Petitioners were given specific notice that the CPWD Manual would form the basis for assessment.

5. The issue is one of the violation of the principles of nature of justice and, if it is evident that the order impugned contravened the principles of natural justice, the existence of an alternative remedy would not prompt the writ Court to shoo away the Petitioners. Since the Respondent authorities are, in a manner of speaking, the prosecution, Judge and Jury rolled into one, the principles of natural justice have to be strictly adhered to by them.

6. Since it appears that the application of the CPWD Manual to the case of the first Petitioner may not have been made upon notice to the Petitioners, the order dated June 9, 2010 passed by the Regional Provident Fund Commissioner-II, Port Blair is set aside and the relevant authority is directed to reconsider the matter after hearing the Petitioners.

7. Such exercise should be completed within a period of eight weeks from date.

8. It is made clear that the merits of the order have not been gone into and it will be open to the appropriate authority to pass the same order, if found suitable, after hearing the Petitioners on the applicability of the CPWD Manual to the first Petitioner.

9. WP No. 1160 of 2010 is allowed accordingly without any order as to costs.

Urgent certified photocopies of this order, if applied for be supplied to the parties subject to the compliance with all requisite formalities.