**(2011) 12 KAR CK 0029**

**In the Karnataka High Court**

**Case No :** W.A. No. 741 of 2011 (L-PF)

M/s. South East Agro Industries Ltd. APPELLANT

Vs

The Employees Provident Fund Organization RESPONDENT

**Date of Decision :** 08-12-2011

**Acts Referred:**

**Citation :** (2011) 12 KAR CK 0029

**Hon'ble Judges :** Vikramajit Sen, Acting C.J.;A.S. Bopanna, J

**Bench :** Division Bench

**Advocate :** Manmohan P.N, for the Appellant; Harikrishna. S. Holla and Sri. Rajesh Shettigar, for the Respondent

**Final Decision :** Allowed

# Judgement

Vikramajit Sen, Ag. C.J.

1. The question, which is central to the appeal is whether the appellant has employed 20 persons at any given time. It is not in dispute that the appellant has 13 employees. The Enforcement Officer, Mysore Division-1, in his report dated 05.06.1999 has mentioned the presence of security personnel allegedly engaged through Crown Security Private Limited, Bangalore.

2. Learned counsel for the appellant states that there were six security guards but employed through Crown Security Private Limited It is clarified by the counsel that in the month of March 1998, these security guards were discharging their duties at the appellant''s premises although they were employed by Maruthi Security Agencies. He however contends that even if it is assumed that the security guards are the direct employees of the appellant, the number would only aggregate to 19 employees and, therefore, the appellant would not fall within the purview of Employees'' Provident. Fund Act. What becomes very significant therefore is whether another person by the name of Yogesh Kotian was also an employee of the appellant at the material time. The case of the appellant is that Yogesh Kotian is a nephew of the Managing Director of the appellant and was

attending the factors/ during his vacation period. In that period a sum of Rs. 2,000/- was received by Yogesh Kotian. The say of the appellant is, that is for reimbursement for purchase of certain materials. In the Bank statement, this amount of Rs. 2,000/- has been reflected. In the aforementioned report of Enforcement Officer, Mysore Division-1, there is ambiguous statement that the employer''s version is in conformity with the bank book. It is however, not in dispute that in the Balance Sheet this amount of Rs. 2,000/- has not been shown under the head ''salary''. Keeping in view the sequence of this payment, it would be indicative of the fact that 20 persons may have been employed, resulting in the appellant falling within the purview of Employees Provident Fund. However, in view of the appellant''s steadfast submission that Yogesh Kotian was not an employee, we think that it was necessary for the respondents to establish their version beyond reasonable doubt. We have already mentioned the ambivalence in the report of the Enforcement Officer. Mysore Division-1 The Assistant Provident Fund Commissioner in his order dated 12.03.2002 has also taken note of the fact that the amount of Rs. 2.000/- paid to Yogesh Kotian has not been included under the head ''salary'' in the Balance Sheet for the year ending 31.03.1998. Nevertheless, a conclusion has been arrived at without any further substantiation that the appellant is covered by the Employees'' Provident Fund Act. Similar is the position in the order of the Appellate Tribunal, New Delhi, in as much as the decision in G. Bajpai vs. Indian Oil Corporation (2009 LLJ 910) has been relied upon to include six security guards as employees of the appellant. However, the Tribunal has palpably fallen in error in recording that the Balance Sheet reveals that the appellant had paid the salary to Yogesh Kotian. This is contrary to the records of proceedings pursuant to the subordinate authorities i.e. the Enforcement. Officer, Mysore Division-1 and the Provident Fund Commissioner.

3. As we have already observed, the stand that the appellant has engaged 20 employees has far-reaching consequences. There should have been no manner of doubt whatsoever in arriving at the conclusion that Yogesh Kotian was an employee at any material time. There is no evidence that any payment apart from Rs. 2,000/- in March 1998, had been paid to/received by the said person.

4. For these reasons, we are not satisfied that the respondents have proved that the appellant had engaged 20 employees. In these circumstances, the appeal is accepted. The order of the learned Single Judge holding that the appellant is covered by the Employees'' Provident Fund Act is set aside. Consequent thereon, the Writ Petition stands allowed.

There shall be no order as to costs.

 