

REPORT OF INDEPENDENT INVESTIGATION INTO THE DEMISE OF ABHISHEK THE SON OF YASHODAMMA, AN EMPLOYEE OF GOKALDAS INDIA, BANGALORE, INDIA

Bobby Joseph, M.D.

EXECUTIVE SUMMARY

Background: On the 29th of July 2014, Abhishek, the son of Mrs. Yashodamma (Employee No. 17440) became ill while in the care of the factory's crèche at the Gokaldas India facility in Bangalore and died at a local hospital. At the time of commencement of this investigation the reasons for the child's death were unclear as the post-mortem examination had not been completed. There were a number of allegations questioning the response of the factory management and staff to the child's acute illness.

Other allegations have also been leveled against the factory with respect to compliance with different aspects of the Karnataka Factory Rules and Codes of Conduct at the time of the event. These are listed below:

1. Availability of a Medical Officer and other health care facilities in factories employing over 200 workers
2. Availability of an ambulance van to transport serious cases of injuries or illnesses
3. Availability of trained nursing staff to address emergency situations
4. Availability of qualified caregivers in the crèche
5. Compensation for employee whose deceased child was in care of factory crèche.

Methodology: The investigation, carried out at the request of the Fair Labor Association (FLA), was conducted over a period of three days. The process included:

- Interviews with the management of the factory
- Interviews with the health personnel of the factory
- Interviews with the mother and father of the deceased child
- Perusal of records pertaining to the case
- Walk-through inspections of the factory premises and facilities
- Visits to the health facilities where the child was taken and interviews with the available health personnel therein

Reconstruction of the event: The incident involving the child Abhishek occurred on July 29, 2014. The child was left in the care of the factory's creche at the beginning of the work day. In the afternoon, the mother was alerted that the child was not keeping well. The child was taken by private automobile to Ashwini Clinic and Sanjivini Hospital but neither facility admitted the child and this delayed proper emergency treatment. The child was eventually taken to MS Ramaiah Medical College Hospital, where he was pronounced "brought dead." The post-mortem report shows no evidence of foul play and states that the opinion of the forensic physician is that "death is due to pulmonary edema probably as a result of natural disease."

Findings pertaining to the alleged legal and code of conduct violations: These findings are presented as per the allegations made by the NGOs and labour unions consulted in the preparation of this report.

1. Non Availability of Medical Doctor in the Factory.

The Management of Gokaldas India and the factory accept that there was no doctor at the facility on the day of the event. It must be mentioned that due to the unavailability of qualified medical professionals in the Bangalore region, it is not uncommon for companies that have multiple units/factories to share a doctor. However, following the incident, the Management has now stationed a Medical Officer on a permanent basis in this factory.

2. Non Availability of an Ambulance.

The Management of Gokaldas India and the factory accept that there was no ambulance stationed at the factory on the day of the event. The ambulance, they state, was stationed in another factory in the same area. Again, it is not common for factories to station ambulances in the factory premises, especially in the garment manufacturing industry, because of low demand for services. However, following the incident, the Management has now stationed an ambulance permanently at the facility.

3. Non Availability of Adequate Nursing Staff at the Factory Dispensary.

The Management of Gokaldas India and the factory state that they have a qualified nurse appointed in the factory. On close scrutiny of her certificates, it was found that the qualifications for the incumbent in the nurse post are unlikely to be endorsed by the Nursing Council of India. It is rare to see qualified nursing professionals in the garment manufacturing industry. In the garment manufacturing industry it is very rare to find persons employed in the other two posts viz. dresser-cum-compounder and the sweeper-cum-ward boy. The factory continues to employ the incumbent as the nurse for the facility. The other two posts were not yet filled at the time of this report.

4. Unqualified Caregivers in Factory Crèche (Nursery)

The Management of Gokaldas India and the factory employs an experienced individual as a crèche attender based on the fact that she has many years of experience in looking after children in the crèche. This individual has not received any formal training in the care of children. Although in most factories in the region the same situation holds true, there are efforts on multiple fronts in Bangalore to train women in the care of children with the specific objective of placing them in crèches run by factories and other organizations. The factory continues to employ the mentioned individual as the caregiver at the crèche. Many changes have been instituted into the crèche infrastructure after the incident, including new bedding and other equipment and installation of a closed circuit television system to monitor the activities in the crèche.

5. Compensation for Employee whose Deceased Child was in Care of Factory Crèche

The Management of Gokaldas India and the factory state that they have given the employee Yashodamma leave as and when she has applied for it, within the framework of the rules. This being a “rarest of rare” case, there is hardly any precedence to the knowledge of this investigator. The response of the management is not guided by any law and as such is entirely up to their concern and understanding. The factory also provided the family a “solatium” amount in cash.

BACKGROUND:

On the 29th of July 2014, Abhishek (date of birth 3rd September 2011 – Appendix 1¹), the son of Mrs. Yashodamma (Employee No. 17440) became ill while in the care of the factory's crèche at the Gokaldas India facility in Bangalore and died at a local hospital. At the time of commencement of this investigation the reasons for the child's death were unclear as the post-mortem examination had not been completed. There were a number of allegations questioning the response of the factory management and staff to the child's acute illness.

Other allegations have also been levelled against the factory with respect to compliance with different aspects of the Karnataka Factory Rules and Codes of Conduct at the time of the event in a letter sent to factory management. These are listed below and are discussed individually in the next section of this report:

1. Availability of a Medical Officer and other health care facilities in factories employing over 200 workers;
2. Availability of an ambulance van to transport serious cases of injuries or illnesses;
3. Availability of trained nursing staff to address emergency situations;
4. Availability of qualified caregivers in the crèche; and
5. Compensation for employee whose deceased child was in care of factory crèche.

It was expected that this investigation would:

1. Focus on the capacity, in terms of staff and resources, policies and procedures at Gokaldas India to address health emergencies and illnesses at the factory;
2. Assess the capacity, policies and procedures at the time of the incident and the status of the same at the time of the investigations;
3. Bring to fore any additional potential risks of non-compliance at the factory in the health and safety domain.

METHODOLOGY:

The investigation, carried out at the request of the Fair Labor Association (FLA), was conducted over a period of three days. All in-depth interviews and focus group discussions were on-site except where indicated. The approximate schedule of the investigation was as follows:

Tuesday, 2nd December 2014:

- Meeting with management of Gokaldas India

¹ FLA Note: The Appendices have been deleted from this report for the sake of compactness. They are available from the expert or from the FLA.

- Mr. Mahendra, Factory Human Resources Manager, Gokaldas India
- Mr. Thyagaraju, Senior Compliance Manager (Adidas)
- Mr. Sireesh Kumar, Head, Compliance, Gokaldas India
- Preliminary Walk-through of factory
- Offsite Meeting with Garment and Textile Workers Union (GATWU) representatives
 - Ms. Prathiba (President), Mr. Jayaram and Mr. Raju BC
- Sequential meetings with
 - Ms. Shiny Thomas, Nurse, Gokaldas India Factory
 - Ms. Radhamma, Crèche Attender, Gokaldas India Factory
 - Dr. Rajamma, Doctor, Gokaldas India Factory
- Offsite Meeting with Ms. Ramya (Cividep Employee and Complaints Handler for Fair Wear Foundation)

Wednesday, 3rd December 2014 (forenoon):

- Visit to MS Ramaiah Medical College Hospital
- Meeting with Ms. Yashodamma, mother of the late Abhishek
- Visit to factory crèche and ambulance room
- Sequential meetings with Workers' Committees
 - Prevention of Sexual Harassment Committee – 8 workers
 - Canteen Committee – 5 workers
 - Grievance Committee – 5 workers
 - Health and Safety Committee – 4 workers
- Visit to local health facilities
 - Ashwini Clinic (first point of referral)
 - Sanjivini Hospital (second referral centre) and meeting with Medical Director of this hospital
- Meeting with Mothers of children currently utilising the crèche facilities – 14 workers
- Meeting with Ms. Chennamma, Crèche Helper
- Telephonic discussion with Mr. Basavaraj, father of the late Abhishek

Friday, 5th December 2014 (morning)

- Telephonic discussion with Dr. Girish, Professor and Head, Forensic Medicine, MS Ramaiah Medical College

Saturday, 13th December 2014:

- Documents Inspection at Gokaldas India Factory
- Guided Health, Safety and Environment walkthrough inspection (with Safety Officer)

- Guided Welfare Activities walkthrough inspection (with Welfare Officer)
- Meeting management of Gokaldas India
 - Mr. Mahendra, Factory Human Resources Manager, Gokaldas India
 - Mr. Thyagaraju, Senior Compliance Manager (Adidas)
 - Mr. Sireesh Kumar, Head, Compliance, Gokaldas India

(A planned second meeting with Ms. Yashodamma did not take place, because she took leave on this day.)

RECONSTRUCTION OF THE EVENT:

This reconstruction is based on interviews with the mother of the boy (Yashodamma), the nurse, the crèche attender, the crèche helper, other employees of the factory, the Director of the 2nd referral centre and various medical personnel at the tertiary care centre (MS Ramaiah Medical College Hospital)

On the 29th of July, Yashodamma came to work as usual at about 9.00am. The child has been coming to the crèche from the month of March 2014. (See Appendix 2 for copy of crèche admission details.) She left her son Abhishek at the crèche and left to her work-spot in the factory. She had her lunch at 12.30pm and on the way back to the shopfloor, she peeped into the crèche and found that her son was quite alright.

The crèche attender, Radhamma, says the boy had fallen asleep as usual after his afternoon lunch – the contents of the meal were brought from home. A little later (after 1.00pm) she found that the boy had wet his bedclothes and when she attempted to wake him, she found he was not responding. Alarmed, she called out for the nurse – they both shifted the child to the ambulance room and tried waking him up by rubbing his palms. An announcement was made calling for the mother².

At about 1.15pm an announcement was made on the factory’s public address system asking her to come to the crèche immediately because her son was not keeping well. By the time she reached the crèche the child had already been shifted to the factory clinic (ambulance room) next door. She found the factory nurse and the crèche attender rubbing the child’s palms – attempting to rouse the child from an unconscious state³. The clinic records show that the child was seen at the facility at 1.19pm⁴.

Since there was no ambulance on site – the godown (warehouse) manager’s car was requisitioned. The godown manager drove the mother, the nurse, the crèche attender and the child (who lay on the laps of the nurse and crèche attender) to the nearest health facility – Ashwini Clinic⁵. The personnel

² Both the nurse and the crèche attender believe that the child was only unconscious at that time – and not dead.

³ Yashodamma suspects that the child had already died when she reached the crèche.

⁴ This is an entry made much later and not on the day of the event.

⁵ This choice was influenced by the report that the child’s sister used to be taken to this clinic for treatment.

at the clinic (not doctors) said they were not equipped to deal with such an emergency and would not be able to treat the child. They suggested that he be taken to a higher-level medical centre⁶.

The child was then taken to Sanjivini Hospital, where they refused to treat him. They suggested that the child be taken to another hospital because the child was brought from a garment factory – and any failure to resuscitate the child could have led to angry workers creating problems in the hospital⁷. This was the reason why the child was immediately referred to a higher-level medical centre, MS Ramaiah Medical College Hospital. The attending physician stated that the child was alive (gasping) and in a very serious condition at the time of his referral⁸.

At MS Ramaiah Medical College Hospital, the records show that the child was brought in at about 2.15pm⁹. The child was examined and pronounced “brought dead”.

Information about this incident quickly reached the GATWU Offices and a representative of the GATWU union went to MS Ramaiah Medical College. The GATWU representative states that the child’s father and other relatives were ready to take the child’s body home for the last ceremonies and that he insisted that a post-mortem was done. However, because it was too late in the day, the post-mortem was postponed to the next day¹⁰.

Following the post-mortem the child’s body was taken to Ramanagaram District (to the father’s village) for the last ceremonies.

Once the period of mourning was over, GATWU initiated negotiations with the management of Gokaldas India claiming for compensation for the death of the child in the factory premises. According to GATWU representatives, the claim for INR 500,000 was not accepted by the management and an “interim relief” of INR 150,000 was given to the mother Yashodamma. (Documentation of this transaction is appended to this report – Appendix 3). In addition, Yashodamma was given money by the factory to cover the costs of the funeral, including the transportation to the village by ambulance – this was confirmed by her as well.

The Forensic Medicine specialist was unable to give a clear cause of death following the post-mortem procedure and, as is common practice, sent body parts to the Forensic Sciences Laboratory for investigations into the possibility of any poisoning or drug overdose. (The Forensic Sciences Laboratory is a state-run institution that is under the direct control of the Police Department.) The results of the investigations done at the Forensic Sciences Laboratory has been received by the

⁶ There is no documentation at this clinic of the arrival of the child to this facility.

⁷ This is a common phenomenon in Bangalore.

⁸ This hospital too does not have any documentation of the arrival of this child into the facility or of the condition at discharge.

⁹ The investigator was unable to verify this document. Such documents are never shown to a third party without warrant.

¹⁰ This fact is at variance with the report made by the FWF Complaints Handler who states that the post-mortem was done on the same day. In fact, the Investigator was unable to confirm most of the statements/allegations in the Complaints Handler’s report.

Forensic Medicine Department at MS Ramaiah Medical College – and these results show no evidence of foul play (Appendix 4). The report states that the opinion of the forensic physician is that “death is due to pulmonary edema probably as a result of natural disease.”

In light of the post-mortem findings, including the reports from the Forensic Sciences Laboratory, many of the non-cardiogenic causes have been ruled out – foul play like poisoning and injuries have been completely excluded. The Investigator’s discussions with Forensic Medicine Professionals (both those who conducted the post-mortem and those in his own institution) appear to indicate that there is no obvious cause for the pulmonary edema detected during the autopsy and hence the death is due to an unknown natural cause. Under these circumstances, where the cause for the pulmonary edema is not identified, it is impossible to comment on the consequences of the lack of a medical professional or of an ambulance, and of the possible consequences of immediate hospital treatment.

ALLEGED LEGAL AND CODE OF CONDUCT VIOLATIONS:

1. Non Availability of Medical Doctor in the Factory.

Allegation: Although Gokaldas India has roughly 1600 workers, the facility reportedly does not employ a full time medical officer as is explicitly required under Section 88-M (C) (1) (i) of the Karnataka Factories Rules 1969 (Factory Rules). The Factory Rules state that “For factories employing above 200 workers:— (1) (i) One full time Factory Medical Officer for factories employing up to 500 workers and one more Medical Officer for every additional 1000 workers or part thereof,” with the result that, in the case of Gokaldas India, the plant was required to employ two such officers. A chief medical officer, if one had been present in the factory, could have diagnosed the child’s illness.

Management’s Response: The Management of Gokaldas India and the factory accept that there was no doctor at the facility on the day of the event.

Local Context: The relevant legal provision is Section 45 of the Factories Act as applicable to Karnataka, which states that the requirement is for one doctor for any factory with more than 500 workers; Section 88-M applies to “hazardous” industries. Due to the unavailability of qualified medical professionals in the Bangalore region, it is not uncommon for companies that have multiple units/factories to share a doctor. This is especially so in the apparel manufacturing business, which is by and large considered a non-hazardous industry. This doctor usually has a fixed schedule and visits factories at specified times on specified days of the week.

Action Taken: The Management has now stationed a Medical Officer on a permanent basis in this factory. The Management also states that they are in the process recruiting more medical professionals for their other facilities.

Further Recommendations: Given that the numbers of incident cases reporting to the doctor on a day-to-day basis are very few and generally of minimal seriousness, it is important that the Medical

Officer's time be better utilised. This could include pre-placement medical checks for workers, annual medical checks of currently employed workers, monthly medical checks for children (already in place), shop-floor visits etc.

2. Non Availability of an Ambulance.

Allegation: Section 92 (5) of the Factory Rules states that “The occupier of every factory to which these rules apply shall for the purpose of removing serious cases of accident or sickness, provide in the premises and maintain in good condition an Ambulance Van.” It has been reported, however, that Gokaldas India does not have an ambulance for use in case of a medical emergency. As a result, Abhishek was taken from the factory to multiple hospitals in a private vehicle without receiving medical attention enroute. Such attention, if it had been available, might have helped prevent the tragic outcome in this case.

Management's Response: The Management of Gokaldas India and the factory accept that there was no ambulance stationed at the factory on the day of the event. The ambulance, they state, was stationed in another factory in the same area.

Local Context: It is not common for factories to station ambulances in the factory premises, especially in the garment manufacturing industry, because of low demand for services. Although not supported by legislation, many facilities rely on the local ambulance service, commonly referred to as “108” – the phone number of this service (much like the 911 in the United States).

Action Taken: The management has now stationed an ambulance permanently at the facility – it is located next to the First Aid Room (Ambulance Room).

Further Recommendations: The ambulance driver should be trained in first aid. His timings for breaks (lunch and tea) should be fixed and clearly displayed and a substitute driver designated for these periods. The assistance of recognized ambulance service providers must be sought by the factory to determine the equipment to be carried on the vehicle and how these should be maintained. A daily inspection routine should be established, again in consultation with recognized ambulance service providers to ensure that the vehicle is always ready to handle an emergency.

3. Non Availability of Adequate Nursing Staff at the Factory Dispensary.

Allegation: Gokaldas India lacks adequate nursing staff in its factory first aid room to address emergency situations. Section 88-M (c) (1) (iii) of the Factory Rules states that factory first aid rooms shall have “one nurse, one dresser-cum-compounder and one sweeper-cum ward boy throughout the working period.” The factory first aid room at Gokaldas India, however, reportedly is staffed only by a single nurse. Although it is unclear to what degree the reported lack of other staff affected the outcome of this particular incident, their absence constitutes a clear violation of the law's requirements.

Management's Response: The Management of Gokaldas India and the factory state that they have a qualified nurse appointed in the factory. While there is no designated dresser-cum-compounder, the

sweeper-cum-ward boy's role is performed by the custodial staff who are appointed to take care of the entire facility.

Local Context: The relevant legal provision is Section 45 of the Factories Act as applicable to Karnataka. Just as in the case of medical professionals, it is very rare to see qualified nursing professionals in the garment manufacturing industry. The nurses in many facilities are those who have worked as "health assistants", "nursing aides" and in other similar posts in hospitals that are not necessarily recognised as teaching facilities. In the garment manufacturing industry it is very rare to find persons employed in the other two posts viz. dresser-cum-compounder and the sweeper-cum-ward boy.

Action Taken: The factory continues to hire an individual who has been in this post for some time as the nurse for the facility. However, on close scrutiny of her certificates, it was found that the incumbent's qualifications for the nurse post are unlikely to be endorsed by the Nursing Council of India. The other two posts were not yet filled.

Further Recommendations: While the incumbent has many years of experience working as a Factory Nurse, the Management should make all efforts to recruit a qualified nurse for each of their facilities. Further, the remaining two posts should also be filled in order to be compliant with the local rules and regulations.

4. Unqualified Caregivers in Factory Crèche (Nursery)

Allegation: The caregivers at the Gokaldas India factory's crèche for employee children reportedly do not have the qualifications required under § 104 (2) of the Factory Rules, which states that "[N]o woman shall be appointed under sub-rule (1) as a woman-in-charge unless she possesses a Nurse's qualifications or produces a certificate that she has undergone training for a period of not less than 18 months in child care in a hospital, maternity home, or nursing home approved in this behalf by the Chief Inspector." The caregivers at the Gokaldas India factory crèche reportedly do not have this experience or training.

Management's Response: The Management of Gokaldas India and the factory employs Ms. Radhamma as a crèche attender based on the fact that she has many years of experience in looking after children in the crèche.

Local Context: Although in most factories in the region the same situation holds true, there are efforts on multiple fronts in Bangalore to train women in the care of children with the specific objective of placing them in crèches run by factories and other organizations.

Action Taken: None thus far with respect to qualified caregivers. However, many changes have been instituted into the crèche infrastructure after the incident, which have been confirmed by the mothers and the management. This includes placing new bedding and other equipment placed in the

crèche. A closed circuit television system has also been installed to monitor the activities in the crèche.

Further Recommendations: The Management should get in touch with local organizations, such as the Karnataka State Women's Development Corporation or other vocational training institutes to identify and recruit potential candidates for jobs in the crèche.

5. Compensation for Employee whose Deceased Child was in Care of Factory Crèche

Allegation: The amount provided by the company as “solatium” for the death of her child in the company’s care, Rs. 150,000, is the equivalent of U.S. \$2,439, or less than two years’ of the employee’s wages for a lifetime loss from which she will never completely recover. In addition, it has been reported that company managers refused to pay employee Yashodamma her full wages for August 2014 (when she went on leave immediately following the July 29 tragedy) on the ground that she “did not sign her leave form.” Such treatment is at odds with the concern and sensitivity you claim the company has shown for this employee with respect to her loss.

Management’s Response: The Management of Gokaldas India and the factory state that they have given the employee Yashodamma leave as and when she has applied for it, within the framework of the rules. Documentary proof of this has been provided to the investigator. (Appendix 5). As stated above, the company has also provided the family a “solatium” amount in cash.

Local Context: There are no legal provisions that govern this case. This being a “rarest of rare” case, there is hardly any precedence to the knowledge of this investigator. The response of the management is entirely up to their own initiative, concern and sensitivity.

Action Taken: Nothing specified under the local rules and regulations.

Further Recommendations: None