

Final Order

Death of infant in the Creche at Texport Creations, Bangalore A case of Culpable Neglect

The Commission took cognizance of a complaint received from Munnad – Social Organisation, a welfare organisation for garment workers in Bangalore regarding the death of an eleven month old female child Shristi in an export garment unit Texport Creations. A three member team including the legal counsel for the Commission undertook a preliminary enquiry on 17th December, 2011 at the house of the bereaved child's parents and at Texport Creations, Mysore Road.

Meeting with the bereaved family: The Commission first visited the home of Ms. Malashree and Mr. Shankar at their one room tenement while they were still deeply mourning the loss of their only child. Initially they were not too communicative but slowly opened up revealing that the child, though a low birth weight baby was growing up well with the occasional routine childhood ailments.

Malashree's (T.NB. 5813) statement: 13th Dec, 2011 was the first day at Textport Creations, she left her baby at the crèche and took her home after a full day work. On 14th Dec, 2011 she marked her attendance at 9 am, left her baby in the crèche and at around 11:30 am bottle fed her baby who was all smiles and responsive, rocked her to sleep and returned to work. Around 12:15 pm, one of crèche attendants came rushing to meet her at her work spot saying that the child eye balls were turned up and she was not responding to any stimulation. The company doctor was contacted telephonically and he advised the Health Worker to rush the baby to a nearby hospital. A auto rickshaw was called and the child taken to the nearby private HiTech Hospital. At the hospital, after a physical examination, the doctors declared that the child was 'brought dead'. The couple admitted in great sadness that they declined getting a post mortem done as they did not wish to "mutilate their baby's body".

The inconsolable couple were paid Rs 5000/ by Texport Creations to cover funeral expenses. A whole host of relatives descended on the family to condole the untimely demise of their baby and this had put them into huge debts. They did not want to press charges on the garment unit and through their grief this young couple expressed their statement that maybe it was their destiny to lose "their first born".

Visit to Texport Creations: Thereafter the Commission's team visited the garment unit which employs 580 women and 40 men and met with the management and also the in house Medical Practitioner, Dr. Vishwanath, the Health Attender, Ms. Manjula Bai, the Welfare Officer Ms. Jahnvi and the crèche workers Ms. Nagamma and Ms. Jayamma. Incidentally these two crèche workers, both illiterate, hold the designation of 'creche attender' and 'sweeper' respectively in the employment orders issued on 1/12/2007 to Ms. Nagamma and on 1/6/11 to Ms. Jayamma by Texport Creations.

The team entered the crèche which is an oblong room measuring around 20ft x 10ft where there were 15 toddlers who were running all around. At one end were two cribs one of which was occupied. Other than the walls which were painted with comical figures, there were no preschool material seen or activity being conducted. The two crèche workers, carry the responsibility of attending to the needs of the 26 children recorded in the crèche, attendance register. The Welfare Officer Ms. Jahnavi holds an MSW degree and is also a trained teacher. She stated that she spends an hour between 10 am and 11 am teaching the toddlers. Ms. Manjula Bai is the only Health worker in the unit and has also been informally made in- charge of this crèche.

The Commission noted on 17th December, 2011 that the attendance for the previous day i.e. for 16th December, 2011 was not marked and baby Shrushti's name had never been entered in the Attendance Register.

On enquiring with Dr. Vishwanath, the cause of the child's death he stated that after conducting his regular health check-up at Texport Creations, he left for another garment unit at 12 noon and was informed soon after that a baby seemed unwell. He directed the Health Worker to shift the child to a hospital and rushed out to meet the mother at the Hi tech hospital.

The Commission sought an enquiry up out about the incident and were informed that directions had been given to the General Secretary of Munnade, an informal association of workers at Texport Creation to undertake the same. The Commission asked Textport Creations to submit details regarding the employment of Ms. Malashree and other crèche staff and the company's audit reports.

The Commission on 1-2-2012 at 3.30 pm summoned Texport Creations to answer the allegations regarding the death of infant Shristi and to also submit documents related to their operation. Thereafter, vide communications dated 1-3-2012, 15-2-2012 and 19-12-12 Textport creations submitted the documents requested including:

1. An attested copy of internal enquiry reports undertaken by Munnade dated: 15-12-2011

The inquiry report of Munnade revealed the following:

- At the hospital, the child was declared brought dead.
 - Dr. Vishwanath had declared in this statement dated 19th December that the child's death was natural.
 - Tea and coffee for the managers is prepared in the crèche kitchen which implies that the crèche attender is in and out of the creche room.
 - Although the factory has an ambulance, the child was not rushed to the hospital in the same but instead in public auto rickshaw.
 - The factory manager Mr. Shumbhugham recommended a post mortem on the child but the parents declined stating that their baby was sickly since birth.
 - It also held that the incident was not a negligence of the crèche attender or doctor and they opined that it was better to close the complaint.
2. Medical report of Dr. Jeeresh of Sanjeev Nursing Home, Pantharapalya, Nayandahalli, Bangalore 560030 dated 14/12/2011 stating the case of death.
 3. Death Certificate issued on 1-02-2012
 4. Medical Certificate issued by Dr. Prabhu R. Patil of Haveri dated 7/1/2012

5. Attested copy of Dr. B.C. Vishwanath statement dated 19-12-2011
6. Written statement of Smt. Malashree dated 14-12-2011
7. Copy of Audit reports for the years 2009, 2010, and 2011.
8. Attested copy of the appointment order issued to Smt. Malashree with voucher copies of salaries paid for Dec-2011 and Jan-2012.
9. The profiles of all the children in crèche
10. Job responsibilities of crèche attendants
11. Appointment order of trained teacher
12. Texport Creations also produced before the Commission an agreement entered on 25/1/2012 between them and Smt. Malashree, the mother of the deceased child, where it is made out that Texport Creations was not responsible for the death of the child, but are making a payment of Rs. 1,00,0,00 (Rupees one lakh only) of which Rs.20,000/ was paid in cash and Rs.80,000/ vide cheque no DD 002788 dated 24-1-2012 to the parents on humanitarian grounds.

On 13-1-2012 the Commission also reported the matter to the Director of Factories and Boilers and recommended that a through enquiry and necessary action be initiated regarding the death of infant Shristi and that an FIR is filed by Texport Creations or through the parents

On 17-1-2012 the Commission received a letter from the Senior Assistant Director, Department of Factories and Boilers stating that an inquiry visit was made to Texport Creations on 24-12-2011. The Department had also suggested to parents of Shristi to file an FIR in the police station and directed the factory to submit a report of the baby's death to the Department of Registrar of Birth and Death Records. The Commission was also assured by the Dept. of Factories and Boilers that the investigation was in process and suitable action would be taken.

On 9-4-2012, the Commission received a response from the Director, Factories and Boilers Department stating that the Additional Assistant Director, Division 4, Bangalore had filed a complaint in 3rd ACMM Court against Textport Creations for violating the law. The Court Hearing in regard to this complaint was on 8-5-2012.

The Commission having inspected the documents produced before it, noted that there were several discrepancies in regard to the manner of death of the child:

Prior complaint made by Commission about Texport Creations

On a complaint received by the "Munnade", Social Organization, an association of women garment workers regarding the lack of and shortcoming in the functioning of crèches in garment factories the Commission on 8/02/2011 and 09/02/2011, visited seven factories including Texport Creations. It was observed by the Commission that 550 workers were employed and 19 children were present in the creche in the age group of 3 to 6 years which measured about 10' x 20'. The Commission noted that the two caretakers were both illiterate and not equipped to keep the children engaged.

The Commission thereafter sent its visit report to the Department of Factories and Boilers bringing to their attention the total apathy of the garment factories in providing child care

services and the helplessness of the workers in claiming their rights, and asked the Department to immediately intervene to ensure that the children were safeguarded and provided adequate care. However, no response was received on the same. Unfortunately 10 months later in the same year, on 14th December, 2011, this incident has taken place resulting in the death of eleven month old Shristi in the same crèche run by Texport Creations.

Response from international brand GAP Inc. : M/s Texport Creations has reported in its response to the Commission dated 13/2/2012 that it manufactures and supplies products exclusively for GAP Inc.

Interestingly, GAP Inc's statement related to its Code of Vendor Conduct makes the following commitment-

'Compliance with laws: Factories that produce goods for Gap Inc. shall operate in full compliance with the laws of their respective countries and with all other applicable laws, rules and regulations.

- A. The factory operates in full compliance with all applicable laws, rules and regulations, including those relating to labor, worker health and safety, and the environment.
- B. The factory allows Gap Inc, and/or any of its representatives of agents unrestricted access to its facilities and to all relevant records at all times, whether or not notice is provided in advance'.

http://www.gapinc.com/content/dam/csr/documents/COVC_070909.pdf

The Commission noting the Vendor Code of Conduct of GAP Inc issued summons to GAP seeking a copy of their audit compliance report, recommendations and any other records related to the functioning of the crèche in Texport Creation. However, GAP Inc responded stating that as M/s Texport Creations and GAP Inc were separate legal entities, GAP Inc. was in no way responsible for actions of M/s Texport Creation and requested that the Commission directly liaise with M/s Texport Creation. Mr. Sashi Bangera, Head of India Production Unit. GAP Inc. failed to appear before the Commission.

Findings of the Commission:

The Commission having inspected the documents produced before it, noted that there were several discrepancies in regard to the time, nature and cause of death of the child.

- i. Dr. Prabhu R. Patil from Haveri issued a Medical Certificate to Texport creation on 7th January 2012 stating that the child had been visiting him off and on as she was suffering from Gastro Enteritis and that the child died 'at last' on 15th December 2011 in Bangalore only with Gastro Enteritis, whereas the Medical Certificate of Cause of Death issued by Dr. Jeerish on 14/12/2012 at Bangalore gives the cause of death as 'low birth weight and febrile convulsions'
- ii. The factory management in its statement dated 13-2-2012 have said that the child was rushed to the hospital immediately after she was found unconscious by her mother at 12.30 pm and the hospital had said that the child was "brought dead" but the time of death mentioned on the certificate is 1.15 pm.

- iii. According to Dr. B.C Viswanath, the in-house doctor of Texport Creations he had left the factory at his scheduled time of 12 noon and immediately after that he got a call from the factory that this baby is 'not responding'. He advised the crèche attender to take the baby to the nearest hospital.
- iv. Malashree, the mother of Shristi has maintained in her Agreement with Texport dated 25/1/2012 that on 14-12-2011 at about 11.40 a.m. Shristi fell unconscious in the crèche and the child was immediately rushed to the nearby Mysore Road Hi-Tech hospital where she was declared brought dead.
 - 1. When an unnatural death occurs in a premises, it is mandatory that a police report is filed and a post mortem is conducted. The failure to have performed a post mortem report, and the failure to have conducted an investigation into the same, leaves many questions unanswered.
 - 2. It is also mandatory that the Factory Inspector of the Department of Labour is immediately informed. This was not done. The failure of the Management in reporting the same to the Police and the Inspector of Factories also makes it suspect.
 - 3. Texport Creations in its letter dated 13-2-2012 report that since the parents of Shristi did not agree for a post mortem to be done the actual reason of her death cannot be established. However there are a lot of discrepancies on various versions of Shristi's death given by the two doctors, her death certificate and from what Malashree herself says, which ought to have been investigated into.
 - 4. The Management of Texport Creations have not directly initiated an inquiry but orally asked garment workers association to undertake the same.(Sl. No. 3, Texport Creations letter dated 19/1/2012)
 - 5. In the light of the fact that the cause of death was not ascertained, and no proper investigation into the same was conducted, the agreement and the adequacy of the amount paid to the mother of the child is also suspect.
 - 6. The inspection of the factory by the Commission both on 8/2/2012 and 17/12/2011 showed that the creche was not being managed and administered as mandated under law.
 - 7. The sweeper and a cook are the only two full time staff of the crèche for 26 enrolled toddlers and infants. On an average there are 15 to 16 children present every day as recorded in the attendance register. These two functionaries have been given other responsibilities like making tea and coffee for staff in the tiny crèche kitchen and taking it to the office room. Further, these two crèche attendants are both illiterate and untrained.
 - 8. Mothers of the children in the crèche reported in confidence (fearing withdrawal of crèche services and employment) that there were no pre-school activities arranged for the children and that they remain restless all day.
 - 9. Only one Health Worker is employed for whole unit of 620 staff and 26 children in the crèche
 - 10. The Welfare Officer for 620 workers doubles up as a preschool educator.
 - 11. Infant Shrusti was taken to the hospital in an auto-rickshaw despite the fact that the factory has an ambulance and it was in the premises as mentioned by Texport Garments in its letter dated 17-1-2012 (Serial No. 6) . It is unclear why the ambulance facility was not used despite it being available.

12. It is not as if Texport Creations employing nearly 700 workers of whom over 90% are women possibly with young children did not have the resources to employ more trained staff, equip the crèche with adequate play and learning material and locate it in a more spacious premises. A quick glance of the audit statement of Textport Creation prepared by S.G. Bhat and Co, Chartered Accountants for the years ended March 2009, 2010 and 2011 reveals soaring profits of Rs. 473,919.29, Rs. 795,236.50 and Rs.41,867,154.06 respectively.
13. It is only after the Commission initiated its inquiry on the death of infant Shristi that the management of Texport Creations thought it fit to appoint a full time trained teacher and move the crèche to larger premises, purchase toys etc as reported in their letter to the Commission dated 1-3-2012.

14. Texport Creations by its own admission in its letter dated 13/2/2012 to the Commission states that it manufactures garments exclusively for the international brand GAP Inc. This reputed international brand beholds lofty principles and pledges to follow the law of the land and through its Compliance Officers it expects to ensure that fair labour standards are adhered to by their suppliers.

GAP Inc. is also a member of Fair Labour Association which pledges to work “ as a collaborative effort of socially responsible companies to create lasting solutions to abusive labor practices by offering tools and resources to companies, delivering training to factory workers and management, conducting due diligence through independent assessments, and advocating for greater accountability and transparency from companies, manufacturers, factories and others involved in global supply chains”. (<http://www.fairlabor.org/>)

15. It is unfortunate that while on the one hand, brands such as GAP Inc. have developed a Code of Vendor Conduct in order to enforce and ensure that vendors comply with the law and that the rights of workers are protected, on the other hand they tend to turn a blind eye to real issues that occur within factories which violate statutory provisions meant to safeguard the rights of workers.
16. The death of the baby Shristi and the deplorable standards adopted in running the crèche reveals that the supplier Texport Creations has neither adhered to the provisions of Factories Act, 1948 nor the Karnataka Factory Rules, 1969 related to the functioning of crèches in factories. This is a sign of total apathy and reveals the callous attitude of all those responsible to run and monitor this service which primarily includes the management of Texport Creations, the Compliance Officers of GAP Inc. who have failed to ensure that Texport Creations abided by the values GAP Inc. pledges and the Labour Inspectors of the Department of Factories and Boilers who have fallen short of reporting the irregularity and ensuring compliance as taken as mandated by law.
17. The failure of the Department of Factories and Boilers to have performed its statutory function of inspection and monitoring the provision of adequate facilities in factories, despite having received a complaint in regard to the same, resulted in the continuance of such violation by Texport Creations. It was only after the death of the child, that the Department of Factories and Boilers initiated action against Texport Creations and filed a complaint against them for violating the law.

Recommendations:

1. Department of Factories and Boilers

- The Department of Factories and Boilers and Texport Creations must be held culpable for the untimely death of eleven month old Shristi. It must be held liable for having failed to perform its statutory function of inspection and monitoring the day care facilities in Textport Creations, despite having received complaints in regard to the same, resulting in the continuance of such violation by Texport Creations.

- Disciplinary action must be initiated against the concerned inspecting official of the Department of Factories and Boilers for having failed to perform his statutory duty. A sum of Rs. 50,000/- to be paid by the said official as interim relief to Ms. Malashree for causing the death of the child due to dereliction of duty.
- From the Labour Welfare Fund, a a sum of Rs. 1,00,000 to be paid to the family of the deceased child to compensate them for the irreparable loss suffered by the death of their child in the garment factory.
- To pursue the prosecution and conviction of Textport Creations under Section 92 of the Factories Act for failure to provide the facilities as mandated under the Factories Act and the corresponding Karnataka Rules.

2. Textport Creations, Bangalore

- Textport Creations must be held liable for having failed to provide necessary statutory facilities in the crèche.
- The Textport Creations must provide all facilities in the creches as mandated under the Factories Act and the Karnataka Factories Rules including
 - ⌘ Provision of one suitable cot or cradle with the necessary bedding for each child, at least one chair or equivalent seating accommodation for the use of each mother while she is feeding or attending to her child, and a sufficient supply of suitable toys for the older children.
 - ⌘ A suitable fenced and shady open air play-ground shall be provided for the older children
 - ⌘ Provision of suitable washroom for the bathing of the children and washing their clothes
 - ⌘ Supply of free milk and refreshment for children
 - ⌘ Employment of staff who are appropriately qualified and trained

3. GAP Inc

GAP Inc must take on the obligation of expanding the scope of its regular audit teams to ensure statutory compliances, and act as pressure groups to ensure that the rights of workers are protected

4. Department of Labour

The Commission calls for an immediate audit by the Department of Factories and Boilers of all welfare measures for women workers particularly for those meant for their children below the age of 6 years at the factories of all garment suppliers in Karnataka and thereafter executing a plan of action to ensure enforcement of statutory provisions.

The Commission also refers to the recommendations made in its Order on the Garment Industries dated 26th June 2012

Sd/-	Sd/-	Sd/-
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