



WORKER RIGHTS CONSORTIUM

To: T. Tippesh, Advocate, S.N. Murthy Associates.
From: Benjamin Hensler and Manodeep Guha
Re: **Death of Worker's Child in Care of Gokaldas India Factory Crèche (Nursery)**
Date: November 6, 2014

This memorandum is in response to your letter of October 15, 2014, replying to our October 6, 2014 memorandum to Gokaldas Exports Limited CEO Gautam Chakravarty concerning the recent tragic death of an employee's child in an onsite crèche (nursery) facility in the company's Gokaldas India (Gokaldas) factory, in Bangalore, India. As we previously noted, this factory produces for the adidas Group, and also manufactures for Puma SE, whose representatives are copied below.

We thank you for the prompt reply to our memorandum; however, we are concerned that the issues raised in our memorandum do not appear to have been adequately addressed by the company. We discuss these issues and the basis for our continuing concerns below, and reiterate our recommendations to Gokaldas with respect to their remediation, so that the affected employee is properly compensated for her loss and future tragedies of this kind are avoided.

1. Non-Availability of Legally Required Medical Doctor in Factory

Your letter notes that Rule 88 (M) of the Karnataka Factories Rules, 1969 which requires full-time medical officers for factories employing more than 200 workers applies only to “hazardous” industries, which do not include garment manufacturing. However, the same law's Rule 92 (which you do not dispute applies to Gokaldas India) requires that factories maintain an “ambulance room” that is in “the charge of at least one whole-time qualified medical practitioner (hereinafter referred to as Medical Officer)” — defined in the law as “a person holding a qualification granted by an authority specified in the schedule to the Indian Medical Degrees Act, 1916, or in schedules to the Indian Medical Council Act, 1956,” — and who is “assisted by at least one qualified nurse or dresser-cum-compounder and one nursing attendant in each shift.”

Moreover, although you state that “the Company has appointed full-time doctors servicing a *cluster of factories* belonging to the Company, located in a particular industrial area” (emphasis added), the law clearly establishes that each factory must have a “whole-time” qualified medical officer. Rule 92 makes provision for, when a factory operates multiple shifts, the factory's whole-time medical officer not to be present on every shift (but still be on-call in case of emergency). The rule gives no indication, however, that it is acceptable for a factory to *share* its medical officer with other factories. Indeed, this would mean that the medical officer would not be “whole-time” with respect to availability to the factory's workers and their children in the

factory crèche -- as was the case, in fact, when the tragic incident involving the employee's child occurred.

For this reason, the WRC reiterates its recommendation that Gokaldas comply with the Karnataka Factories Rules by providing a dedicated whole-time medical officer at each of its factories, including the Gokaldas India factory where the tragic death of the employee's child took place.

2. Non-Availability of Legally Required Ambulance Van at Factory

Regarding this issue, your letter states that,

The Factory has an ambulance van, but it was not available at that instance. Under the circumstances and in view of the urgency, the Manager's car, which was readily available, was used to move the child to the hospital in the shortest possible time.

Factory employees report, however, that your assertion is inaccurate: The Gokaldas India factory, itself, does not have an ambulance van. Instead, just as you acknowledge is the case with respect to onsite medical personnel, Gokaldas Exports reportedly maintains one ambulance van to serve *all* of its factories in the local area. This is contrary to Rule 92 (5) of the Factory Rules, which clearly 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." (emphases added).

If Gokaldas Exports *had* complied with the requirements of the Karnataka Factories' Rules, by providing at "every factory" — including Gokaldas India — an ambulance that was "in the premises" and "in good condition," this ambulance van would have, indeed, been available to take the employee's child to the hospital while providing medical care enroute. The fact that no such ambulance van was available — and no fulltime medical officer was present to provide care — meant that, as you acknowledge, the Manager's car had to be used, and enroute care by a medical officer could not be given to the employee's child.

For this reason, the WRC reiterates its recommendation that Gokaldas comply with the Karnataka Factories Rules by providing in the future a dedicated ambulance van at the Gokaldas India factory where the tragic death of the employee's child took place.

3. Non-Availability of Adequate Nursing Staff in Factory Ambulance (First Aid) Room

Your letter states that, according to Gokaldas' management, "There is a full time qualified nurse in the Factory Ambulance room who has been working with the Factory for over 8 years" and "a trained dresser to assist the nurse." We would note that our memorandum does not question the presence or qualifications of the factory nurse. Factory employees report, however, that they are unaware of any dresser being employed at the factory. We would ask, therefore, that you provide further information to verify the company's assertion in this regard.

Moreover, as our memorandum clearly pointed out, Rule 88-M (c) (1) (iii) of the Factory Rules states that factory ambulance rooms shall have “one nurse, one dresser- cum-compounder *and one sweeper-cum ward boy* throughout the working period.” (emphasis added) Therefore, even if your client’s assertion regarding the dresser is accurate, it still appears that the ambulance room lacks the minimum staffing required by law. Again, while it is unclear whether this understaffing affected the handling of the recent tragedy, this situation does represent a failure to comply with relevant standards and could hinder the factory’s ability to address other medical emergencies.

For this reason, the WRC reiterates its recommendation that Gokaldas comply with the Karnataka Factories Rules by providing in the future in its ambulance room, the full complement of personnel required by the law.

4. Under-qualified Caregivers in Factory Crèche (Nursery)

Your letter states that Gokaldas management reports that the factory crèche is staffed by “two crèche care takers . . . with over 10 years’ experience.” As we cited in our memorandum, however, Rule 104 (2) of the Factory Rules clearly states that the person in charge of a factory crèche must have prior experience and/or qualifications of a *medical* nature:

“[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.” (emphases added)

The reason for this requirement should be apparent from the facts of the recent tragedy involving the death of the employee’s child: In case of medical emergency involving one of the employee’s children in the crèche, it is the caretakers who are responsible, in the first instance, for recognizing the nature of the emergency and being the first to respond.

It is troubling that your letter gives no indication that Gokaldas even recognizes the existence or rationale of this requirement, much less sees a duty to comply with it. If any of the crèche caretakers at the Gokaldas India factory do have such experience, please provide us with further information in this regard.

The WRC reiterates its recommendation that Gokaldas India comply with the Karnataka Factories Rules by providing in its factory crèches caretakers-in-charge who have the requisite experience in child care in a medical care setting as is required by the law.

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

The information that you have provided concerning compensation to employee Yashodamma to address the loss of her child is consistent with our own understanding of the facts. We note,

however, that 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.

The WRC recommends that Gokaldas provide employee Yashodamma with substantial additional compensation in an amount which is more consistent with: (1) the severity of the tragic loss she has suffered, (2) the apparent lack of compliance of the company’s child and health care facilities at the time of this tragedy with applicable law, (3) the substantial resources of the company,¹ and (4) the company’s status as a supplier to leading branded apparel companies like adidas and Puma.

6. Conclusions

While we appreciate your recent reply to our memorandum, the WRC remains concerned by conditions at the Gokaldas India factory, that, as revealed by the recent tragedy befalling employee Yashodamma’s child, fail to comply with applicable legal standards for the protection of workers and their children in the factory crèche. The WRC continues to urge that in order to help to prevent the recurrence of such incidents, the recommendations made above be implemented at Gokaldas India and at any other Gokaldas Exports production facilities where current conditions fail to comply with applicable law. We also urge that the affected employee be provided with compensation that is more commensurate with the degree of her loss, the circumstances of the tragedy, and the resources of the company

As previously stated, the WRC would like to arrange a visit to the Gokaldas India factory to discuss these issues and consider the steps the company has taken or is planning to take to achieve corrective action. Please let us know your soonest availability for such a meeting. We look forward to discussing these matters with you further and working cooperatively with you to address the outstanding concerns we have raised. Thank you very much.

Cc: William Anderson, adidas Group
Gautam Chakravarty, Director and CEO, Gokaldas Exports, Limited
Reiner Hengstmann, Puma SE

¹ Blackstone Group LP, which holds a majority stake in Gokaldas Exports, had a net income in the past year of U.S. \$ 3.5 billion. Blackstone L.P., “Blackstone Reports Record Full Year and Fourth Quarter 2013 Results,” http://ir.blackstone.com/files/doc_presentations/2014/Blackstone4Q13EarningsPressRelease.pdf.