Date of filing :10.05.2016.

IN THE TAMIL NADU STATE CONSUMER DISPUTES REDRESSAL COMMISSION, CHENNAI.

Present:**Hon'ble Thiru. Justice R.SUBBIAH ... PRESIDENT**

C.C. No.89 of 2016

Orders, dt: 08.11.2023

Shanthi KalaiArasan,
W/o.Kalaiarasan (Deceased),
No.127, 1st Street,
Antony Nagar,
Annanur,
Chennai 600 109. ... Complainant

Vs.

M/s.Miot Hospitals,
Rep. by its Founder
Dr. P.V.A. Mohandas,
No.4/112, Mount Poonamallee Road,
Manapakkam,
Chennai 600 089. ... Opposite Party.

For Complainant : M/s.R.Karthikeyan

For Opp. Party : Mr.S.Manuraj

This complaint came up for final hearing on 28.08.2023 and, after hearing the arguments of the counsels appearing for the parties and perusing the materials on record and having stood over for consideration till this day, this Commission passes the following:-

O R D E R

R.Subbiah, J. – President.

Alleging service deficiency and negligence against the OP that, despite the Hospital's close proximity to the Adyar river and its location in a low-land prone to flooding/inundation during rainy seasons, it lacked the competence & foresight expected of an acclaimed medical care provider and had no disaster management system to tackle the foreseeable natural calamity in the form of floods that would right away inundate and submerge the Basement Level where the Hospital's administration installed the power rooms & Generator Units, which are the source for continuous functioning of the entire life support system particularly the Ventilator Facilities meant for the critically-ill patients in the Medical ICU, which is also housed at the same Basement Level and that, in spite of having witnessed and experienced submerging of the Basement of the Hospital during the intermittent rain spells in November-2015 that had run as a clear precursor to the heavy downpour forecasted for December-2015, the Administration had

negligently ignored the weather warnings & updates given frequently by various agencies of the Government including the Meteorological Department, particularly the warning issued on 28.11.2015 itself about a possible heavy & very heavy downpour from the last date of November, 2015, and consequently, due to lack of anticipated preparedness plans & proactive efforts on the part of the administration to avert the danger & losses that would arise from the foreseeable calamity/flood, which engulfed the Hospital above the basement level on 01.12.2015, causing total power outage and consequential failure of the life support system, 18 patients including the husband of the complainant, who was on Mechanical Ventilator while receiving critical medical care, died one after the other at different timings between 02.12.2015 and 03.12.2015, she has filed the present Complaint, seeking for a direction to the OP to pay to her a compensation of Rs.1 crore for the mental agony caused to her as well as to the unmarried daughter over the death of the family head, besides the litigation expenses and also to direct the OP to install Disaster Management Techniques in

their premises on par with the Central Laws on Disaster Management.

2. The gist of the complainant's case is as follows:-

The husband of the complainant – Late Kalaiarasan (hereinafter referred to either as ***patient*** or ***deceased***) was working as Senior Manager in the Bank of Baroda and, on 11.11.2015 at around 6.30 AM., he slithered near the restroom and sustained head injury, for which, he was immediately rushed to Sundaram Medical Foundation, Anna Nagar, Chennai, where he was diagnosed to be suffering from Acute Hemorrhagic Stroke as well as Brain Stem Hemorrhage, however, he was stable then as he opened eyes to the call of the doctors and also able to move the limbs at the time of admission. As there was no insurance cover in the aforesaid Hospital, on 17.11.2015, the patient was shifted to the OP-Hospital, where the complainant had the option to utilize the benefits under the Insurance Cover available from the patient's employer/Bank to an extent of Rs.4 lakh. At the OP, the patient was diagnosed to be

having Hypertensive Brainstem Bleed with Status Epilepticus and he was admitted in the Intensive Care Unit (**ICU**). He went into unconsciousness due to obstruction in breathing and, after undergoing a procedure called Tracheostomy and intubation, his breathing condition was stabilized with Ventilator Support.

In the OP Hospital, the relatives of the convalescent were allowed for a very brief duration of about 2 minutes and the Attenders of the patient were not allowed to stay after 6 PM. even inside the hospital premises. On 01.12.2015, she was told by the Duty Doctor that the patient was showing some improvement in the health. While so, due to the heavy rains on that date and release of water in the Adyar River generating floods which had breached the compound wall of the Hospital, she could not gain access to the Hospital on 2nd and 3rd December, 2015 and she was very much shocked to hear that on 01.12.2015 itself, the flood had engulfed the entire Basement Area housing the EB Main Room, Medical Block, Generator Room and the Oxygen Cylinder Storage Facility. Since the surfacing news revealed

the shocking death of 18 patients, in order to know the status of her husband, the complainant made enquiries with the Hospital Authorities but in vain and she was made to run from pillar to post. The appalling status of the Hospital was such that the entire ICU was deserted and there was none there to respond or to guide the relatives of the patients. It was only on 04.12.2015, from the media announcements made by the OP, she came to know about the death of her husband and 17 other patients on 02.12.2015. The death certificate is cleverly cooked up to indicate the ailments diagnosed at the time of admission as the cause of death, whereas, the fact remains that it was not the complainant's husband alone but many other patients in the ICU had all died due to non-availability of Ventilator Support. The death of the patient was not a direct result of the head injury & complications for which he took treatment from the Hospital rather it was obviously due to non-supply of oxygen, which lapse was only due to the negligence of the Hospital. Even prior to the weather warnings issued on 28th November, 2015, the Hospital had already suffered severe

inundation in the same month/November and the flood water had engulfed the building upto the ground floor, yet, the Hospital did not advise the patients to move to other Hospitals and, after ignoring all the prior warnings issued by the State Government through their respective District Collectors/Tahsildars/Officials, only from the evening of 3rd December, 2015, the Management of the Hospital began to evacuate the patients and all these sequence of events would go to show the clear negligence and carelessness on the part of the OP and make this a fit case for applying the doctrine of *res ipsa loquitur*.

The disaster was foreseeable, however, in the absence of a solid disaster management system in the Hospital Premises, when the floods struck, the Basement Floor housing the Medical ICU Block was completely submerged in water, causing power & life support failure and resulting in the death of 18 patients and sufferings to other patients. Further, during the November rains itself, when the basement floor was flooded, the conduct of the OP in having retained the patients there despite the heavy rain

warnings for the end of November clearly amounts to criminal negligence as well. Therefore, the loss of 18 human lives is solely due to the negligence of the Hospital in tackling the natural disaster with prior preparedness upon the weather forecasts. Their further conduct in having driven the relatives of the deceased patients from pillar to post and informing them much later that the corpses were shifted to the Government Hospital for autopsy is also a glaring instance of gross negligence. Such negligence and service deficiency on the part of the OP has inflicted great mental agony and financial loss to the family of the complainant, who had to pay a sum of Rs.7 lakh towards further medical expenses just 3 days prior to the death of the patient. Hence, the present complaint, seeking to grant the relief as aforementioned.

3. The crux of the written version filed by the Opposite Party runs thus:-

The patient was an alcoholic and, at the time of his admission in the OP on 17.11.2015, he was not conscious

and it was found by the Doctors that he was having Hypertension and Type-II Diabetes Mellitus and that alcohol had aspirated into his lungs as a result of prolonged addiction. With the clinical condition of Hypertensive Brainstem Bleed with Status Epilepticus, he was unable to move all the four limbs because of acute hemorrhagic stroke. On 19.11.2015, consent was obtained from the complainant for performing an anesthetic procedure called Tracheostomy, on the patient. The family of the patient was duly informed about the patient's condition consequent to brain stem hemorrhage, which was compounded by risk factors such as smoking, alcoholism, Type-II Diabetes Mellitus, hypertension and advancing age. Further, he had super refractory status epilepticus or continuous seizures despite 24-hour treatment including intravenous anesthetic agents and anti-seizure medications. On 26.11.2015, the Doctors clearly conveyed to the patient's family that the survival chances were very low as the patient had shown no improvement. The patient required Ventilator Support

during his entire stay in the Hospital as he had lung failure. Also, for kidney failure, he needed dialysis.

Tracheostomy is offered to those patients who require a long-term ventilation and whose breathing efforts were not showing the signs of recovery. The patient had undergone the said procedure after the informed consent obtained from the complainant and her brother-in-law. On 01.12.2015, the patient showed worsening hemodynamics, which was immediately apprised to the attendants. In a span of two weeks, the complainant and her brother-in-law had cumulatively signed 20 consent forms.

It is the common practice for the Doctors at the OP that, on their arrival at 7 AM., they examine the patients and review their reports and only thereafter, they would interact with the Attendants of the patients at around 11 AM to discuss about the plans for further treatment, if any. Restriction on visitors and attendants is intended to prevent infection to the patients, who are critically ill and on Ventilator Support. Therefore, it is the regulation by the Hospital Authorities to restrict the visitors keeping in mind

the interest of the patient and to avoid transmission of infection to them from the visitors. The patient was treated in a Special ICU where he had an individual room with 24 X 7 monitoring by the Nurses as well as the attending Doctors.

In between the Adyar River and the OP Hospital, there is a Chocolate Factory and, on 01.12.2015, the overflowing water from the said river inundated the Chocolate Factory and thereafter, it breached the wall of the Hospital and engulfed the building that led to a great loss. Due to heavy rains, power failure was experienced across Chennai City as well as Kancheepuram District. The OP had no control over the rainfall or the release of water in Adyar River. Yet, they had taken necessary steps for the rescue and assisted the patients by shifting them to other hospitals in the City. In fact, on this issue, a PIL (Public Interest Litigation) in W.P. No.40385 of 2015 was filed before the Madras High Court and a Division Bench passed orders therein, rejecting all the imaginary allegations made against the OP on the deaths occurred during the floods and

directed the police authorities concerned to file final report after due investigation.

It is true that, during floods, no one could gain ingress and egress to the hospital. Even the army could not enter for carrying out the relief works. The Doctors and the staff of the OP had, on their own, contacted the Fire Service and other governmental authorities for help as they were unable to come to the Hospital. There was not a single death in the hospital due to drowning. Safety of all the 144 patients and that of 31 amongst them, who were on ventilator support, was well taken care of.

The complainant's husband succumbed to his illness due to refractory status epilepticus, brain stem hemorrhage, septic shock, acute kidney injury – on acute peritoneal dialysis, type-II Diabetes Mellitus and Hypertension, after receiving a high-end medical care and treatment and the cause of death as given in the death certificate of the OP Hospital is endorsed in the Post-mortem certificate issued by the Government Hospital. As such, there cannot be any veracity in the allegation of the

complainant that the death of her husband was under suspicious circumstances.

During the floods, the Hospital had formed a team under its Deputy General Manager & 5 other staff members to set up a help desk to receive family members and apprise them about the patients' status. The complainant never turned up either on 02.12.2015 or 03.12.2015 seeking any information, nor did she send anybody else. Also, the Doctors of the OPs were also in contact with the Royapettah Government Hospital and had coordinated for hand-over of bodies to the relatives. Due information was provided to appropriate government authorities as well as the relief and coordination officials; as such, there was no negligence or recklessness as falsely alleged by the complainant. There is no truth in the allegation that the Hospital had no Disaster Management System since it is the fact on record that Dr. Col.Trevor Nair, who had played important roles during Kargil War, was the Head of the Disaster Management and he has prepared a Statement detailing the various steps taken to ensure that oxygen supply was replenished and

electricity back up was activated; therefore, all contrary allegations leveled in the complaint are devoid of factual reasoning and riddled with conjectures.

By denying all other allegations and emphasizing that the complaint absolutely lacks cause of action to sustain the allegations of negligence or service deficiency, it is sought that the same is liable to be dismissed as bereft of any merit.

4. In order to substantiate the claim and counter-claim, both sides filed their respective proof affidavits and, while on the side of the complainant, 8 documents have been marked as Exs.A1 to A8, the OP has filed 25 documents that are marked as Exs.B1 to B25.

5. Learned counsel for the complainant, at the first instance, has presented a narrative of the sequence of events by stating that, during November, 2015 itself, the whole of Chennai City started receiving rains that had the impact of inundating the entire Guest House as well as the Out-

Patient Block of the OP Hospital. Such a flooded scenario in November itself signaled a live warning to the Hospital Authorities that any subsequent severe downpour in the near future may cause great loss to the lives of the inmates and damage to the stability of the infrastructure installed at the spaces prone to inundation. He further states that both the Meteorological Department as well as the Agencies of the Government had issued repeated warnings and particularly, the weather forecast given on 28.11.2015 was very specific that there would be a heavy rainfall from 30.11.2015 onwards and, by taking serious note of those warnings and updates on the face of the near-past self-experience that the lower part of the Hospital suffered inundation some days ago in the same month of November, the OP could have proactively focused their first-attention and concentrated the wholesome efforts to immediately shift the patients from the ICU at the basement, which is highly vulnerable to flooding, to the elevated spaces/floors in the Hospital and similarly made constructive efforts to ensure uninterrupted power supply and back-up owing to the reason that the power

panels and rooms located at the Basement Floor would suffer the first damage if floods strike the premises. But the self-speaking reality is that, despite the prior weather warnings widely received by one and all, the Hospital Authorities, who were expected to take first note of the same with a sense of seriousness and caution in order to activate their disaster management, did not bother even to transfer the patients from the ICU at the basement to other safer zones in the premises or to some other hospital and they remained lethargic until the flood started to invade the basement where the ICU, which is meant for very fragile type of patients with critical illness, is located and, after the flood water submerging the Generator Room/EB Power Panel Rooms as well as the oxygen cylinder storage facility at the same Basement, the said place sunk into gloominess due to power outage and, as a further consequence, the life-support system covering the oxygen supply, ventilator facility, etc. had become non-functional, due to which, the patients at the ICU, whose breathing was hitherto managed with mechanical ventilation, had lost such essential support,

resulting in the death of 18 patients including the husband of the complainant, who died on 02.12.2015.

Learned counsel further states that, although the complainant's husband was critically ill at the relevant point of time, it is an admitted fact that the patient had difficulty in breathing and that is why he was performed the procedure called tracheostomy for placing a catheter so as to keep him attached to mechanical ventilation, which means that the primary requirement even for receiving medication is his continuous attachment to the mechanical ventilation. While so, after the flooding, when the entire life support system failed at the Basement where the patient was kept in the ICU, he could not breathe due to non-availability of supportive ventilation and as a consequence, he succumbed ultimately. Therefore, the loss of life is not merely due to the critical illness but it was also due to the other contributing cause, namely, failure of life support system which phenomenon was only due to the negligent conduct of the Hospital. This glaring aspect would formidably militate against the core defence of the OPs that the death was only

due to his medical condition of critical illness; as such, the OP cannot wash away their liability arising from their negligence which invited the impacts arising from the foreseeable danger that was warned of well in advance.

The OP being 'occupier' of the Hospital and the patients being Visitors, the former, which collects consideration for the stay and treatment in the Hospital and thereupon owes highest degree of duty & care towards the patients, breached such duty by their unprecedented slackness and negligence and failed to avert the loss to lives and infrastructure despite the fact that the harm & danger was well foreseeable. As to the scope of duty owed by an occupier towards its visitor, learned counsel has highlighted the following text from ***Winfield & Jolowicz on Tort*** (16th Edition), which was highlighted by the Apex Court in its decision rendered in ***Sushil Ansal and Ors vs. State (2014 (6) SCJ 418)***:-

> "At common law the duties of an occupier were cast in a descending scale to four different

kinds of persons and a brief account is necessary to gain a full understanding of the Act. The highest degree of care was owed by the occupier to one who entered in pursuance of a contract with him (for example a guest in an hotel): in that case there was an implied warranty that the premises were as safe as reasonable care and skill could make them. A lower duty was owed to the "invitee", that is to say, a person who (without any contract) entered on business of interest both to himself and the occupier (for example a customer coming into a shop to view the wares): he was entitled to expect that the occupier should prevent damage from unusual danger, of which he knew or ought to have known. Lower still was the duty to the "licensee", a person who entered with the occupier's express or implied permission but without any community of interest with the

> occupier: the occupier's duty towards him was to warn him of any concealed danger or trap of which he actually knew. Finally, there was the trespasser, to whom under the original common law there was owed only a duty to abstain from deliberate or reckless injury."

To further reiterate the point that the OP ought to have exercised reasonable care to ensure the safety of the patients against all foreseeable risks, learned counsel relied upon the above referred decision of the Apex Court in ***Sushil Ansal,*** wherein the conviction of owners of the cinema hall was affirmed for the reason that owners, being occupier of the cinema hall, were running the said hall with structural deviations against the statute, as a result of which, 18 persons died in a fire accident, by holding thus:-

> " ..... the degree and nature of care expected of an occupier of a cinema hall, we must at the outset say that ***the nature and degree of care is expected to be such as would ensure the safety of the***

> ***visitors against all foreseeable dangers and harm. That is the essence of the duty which an occupier owes to the invitees whether contractual or otherwise***. The nature of care that the occupier must, therefore, take would depend upon the fact situation in which duty to care arises."

In the present case, admittedly, the patient was left under the exclusive care of the OP as, admittedly, nobody was allowed to stay along with him. As he was able to breathe only with Ventilator Support, it is the duty of the OP to take utmost care in providing uninterrupted ventilator facility to him. While so, when the risk was foreseeable on the face of the repeated weather forecasts and warnings by various agencies, the failure on the part of the OP to be alive to the same for taking anticipated measures in the form of shifting the patients at the Basement Point to other safer zones in their premises and ensuring uninterrupted availability of the life support facilities, ultimately contributed to the deaths that could have been avoided but for the negligence.

Therefore, for the reason and fact that the medical care and treatment had become meaningless to the patient upon the collapse of life support system which phenomenon was only due to the utter negligence of the OP, they cannot have any good defence on the ground that the patient succumbed to his serious ailments.

After highlighting the following excerpts from ***Jacob Mathew vs. State of Punjab and another (2005 (6) SCC 1)*** on the scope and concept of Negligence –

> "Eminent jurists and leading judgments have assigned various meanings to negligence. The concept as has been acceptable to Indian jurisprudential thought is well-stated in the Law of Torts, Ratanlal & Dhirajlal (Twenty-fourth Edition 2002, edited by Justice G.P. Singh). It is stated (at p.441-442) ___ "Negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the

conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. Actionable negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the defendant owes the duty of observing ordinary care and skill, by which neglect the plaintiff has suffered injury to his person or property. … The definition involves three constituents of negligence: (1) A legal duty to exercise due care on the part of the party complained of towards the party complaining the former's conduct within the scope of the duty; (2) breach of the said duty; and (3) consequential damage. Cause of action for negligence arises only when damage occurs; for, damage is a necessary ingredient of this tort."

According to Charlesworth & Percy on Negligence (Tenth Edition, 2001), in current forensic speech, negligence has three meanings. They are: (i) a state of mind, in which it is

opposed to intention; (ii) careless conduct; and (iii) the breach of duty to take care that is imposed by either common or statute law. All three meanings are applicable in different circumstances but any one of them does not necessarily exclude the other meanings. (Para 1.01) The essential components of negligence, as recognized, are three: "duty", "breach" and "resulting damage", that is to say:-

1. the existence of a duty to take care, which is owed by the defendant to the complainant;

2. the failure to attain that standard of care, prescribed by the law, thereby committing a breach of such duty; and

3. damage, which is both causally connected with such breach and recognized by the law, has been suffered by the complainant.",

learned counsel would re-state and reiterate that, in this instance also, the OP-Hospital grossly neglected and failed in the duty of care owed by them to their visitor/patient and such negligence adversely aggravated the already fragile health condition as a contributing factor for his death and, in such circumstances, having regard to the facts and sequence of events speaking aloud about the total administrative failure of the OP, the principles of res ipsa loquitur come into play and therefore, the burden only lies on the OP to prove otherwise that they took proper care and duly performed their duty, so as to dispel the charge of negligence. Learned counsel also pressed into service a decision of the Apex Court in **S.Vedantacharya vs. Highways Department of South Arcot (1987 (3) SCC 400)**, wherein, it is articulated, before heavy rain could be accepted as a defence for the collapse of the culvert, the defendant must indicate what anticipatory preventive measures were taken.

Learned counsel has also drawn the attention of this Commission to the decision, dated 01.02.2022, of the

Madras High Court, rendered in ***MIOT Hospitals and Ors. Vs. Venkata Ramnaiah & Ors. – Crl.O.P.Nos.25958 to 25965 of 2017 (MANU / TN / 0512 /2022)***, which pertains to a batch of cases filed by the OP Hospital herein under Section 482 of the Cr.P.C. before the Madras High Court, seeking to quash a batch of criminal proceedings initiated by the complainant and others before the JM, Alandur, and made a specific reference to the following text there-from:-

> " 12. In Jacob Mathew's case (supra) the Honourable Apex Court has quashed the proceedings against a doctor for non-availability of the oxygen cylinder in the hospital. Above case relates to the medical negligence. The same is not applicable to the fact of the present case. ***The question is here whether the petitioners act will constitute high decree (sic. degree) of negligence or not, is not a mere medical negligence. It pertains to taking safety measures of***

reasonable care to shift the patients to some other hospital or some other floor. Therefore the above judgment is not applicable to the fact of this case."

As such, a clear-cut observation has been made by the Madras High Court to the effect that the case of the OPs does not pertain to medical negligence alone rather it is also in respect of taking measures of reasonable care to shift the patients to some other hospital or floor. That being so, this Commission may have to take serious note of the factum that this is not a solitary instance of simple negligence that had occasioned in an isolated place rather it is a gross negligence of a very high magnitude and complete administrative failure of the OP-Hospital in taking preventive measures to protect a cluster of human lives as well as the power hub, which is the source of functioning for the entire life support system, from a foreseeable natural calamity; as such, a clear case of administrative negligence is made out against the OP which must be held liable in line with the

observation of the Delhi High Court made in ***Indraprastha Medical Corporation Ltd. vs. State of NCT Delhi and Ors, decided on 02.08.2010 in Crl.M.C. No.827 of 2010 (2010 ILR 6 Delhi 653)*** to the effect that if there is an administrative negligence, or a negligence of not providing basic infrastructure, which results into some harm to an aggrieved person or such negligence which is impersonal, the hospital can be held liable.

Further, the death of 18 fragile patients was although avoidable by means of diligent preparedness and proactive measures and by duly acting upon the weather forecasts and warnings issued by the authorities well in advance, the OP allowed the deaths to happen by their act of unprecedented slackness and negligence and particularly, in the case of the husband of the complainant, despite collecting lakhs of rupees, there is a glaring failure on the part of the Hospital in performing the duty of care owed by them to the patient. There is also disparity and willful administrative negligence involved in this case for the reason that all the patients died are domestic individuals housed in

the ICU at the basement point whereas, similar section of international patients housed in the ICU of the International Block remained unaffected due to the extraordinary diligence exercised in all aspects towards the said block. If transfer of the domestic patients to other hospitals was impossible, at least with minimum sense of duty and care, the Hospital could have shifted them to the International Block which action could have averted the loss of valuable lives. But, unfortunately, the Administration was not ready to take up even such possible exercise.

Ultimately, by re-stating that the facts clearly speak of the administrative negligence for application of the principles of *res ipsa loquitur* on all fours, learned counsel urged for grant of the entire realm of relief as sought for in the complaint and also for a specific direction to the OP for installing a proper Disaster Management System/Techniques in the Hospital Premises on par with the norms of the Government, on Disaster Management.

6. Learned counsel appearing for the OP, in an assiduous endeavour to counter the above contentions made on behalf of the complainant, would submit as follows:-

The OP, which is a renowned Hospital and founded on the guiding principle of putting the patients first always, has the state of art medical equipments and practitioners and it is the only Hospital in the whole City that engage doctors as full time practitioners so that the patients are provided round the clock care.

In the case of the complainant's husband, he was shifted to the OP from Sundaram Medical Foundation for further management on 17.11.2015 and, at the time of admission, he had altered sensorium with recurrent seizures due to status epilepticus and he was provisionally diagnosed with Brain Stem Hemorrhage and Acute Hemorrhagic stroke. After his admission, each and every course of treatment and the health status & stability of the patient between 17.11.2015 and 01.12.2015 were duly informed to the family members, who did not have any further questions. At no point of time, the patient had shown any

good sign of recovery and, in fact, his condition was deteriorating day by day. With no limb movements, he was put on mechanical ventilator support through tracheostomy tube. While so, on 01.12.2015, he showed worsening haemodynamics and on the next date/02.12.2015, he was on Ambu Ventilation with high inotropic support. Suddenly, he suffered cardiac arrest and, despite all clinical attempts to revive him, he passed away at 5.15 PM. on that date and the cause of death was intra cerebral hemorrhage, pontine hemorrhage, status epilepticus, sepsis & septic shock and acute kidney injury. The above details available from the medical records of the patient would go to show that the patient died due to his own serious health complications and that the OP left no stone unturned in stabilizing the condition of the patient. In fact, the OP has gone above and beyond the reasonable care expected of a specialized centre in the given health condition of the patient. The Hospital neither breached the duty & care owed by them to the patient nor any damage was ever resulted to him as a result

of any lapse on their part; as such, there is no scope for any negligence or service deficiency in this instance.

Further, the Post-Mortem Certificate under Ex.A4 clearly states that the deceased would appear to have died due to effects of intracranial hemorrhage (Pontine Haemorrhage) which endorses the cause of death as mentioned in the Death Certificate issued by the Hospital under Ex.A1 as Intra Cerebral Hemorrhage – Pontine Hemorrhage, Status Epileptics, Sepsis & Septic shock and Acute Kidney Injury. When the cause of death is clearly borne out by overwhelming medical records that it was due to multiple ailments suffered by the patient, the contrary allegations of the complainant shall be held to be baseless and vexatious.

By relying upon a decision of the Apex Court in ***Indian Medical Association vs. V.P.Shantha & Ors (1995 (6) SCC 651)*** wherein the Apex Court held in the following terms to include the services rendered by the medical professionals within the ambit of Section 2 (1)(o) of the CP Act that defines the term 'service' –

> " 55. On the basis of the above discussion we arrive at the following conclusions:
>
> (1) Service rendered to a patient by a medical practitioner (except where the doctor renders service free of charge to every patient or under a contract of personal service), by way of consultation, diagnosis and treatment, both medicinal and surgical, would fall within the ambit of 'service' as defined in Section 2(1) (o) of the Act.
>
> (2) The fact that medical practitioners belong to the medical profession and are subject to the disciplinary control of the Medical Council of India and/or State Medical Councils constituted under the provisions of the Indian Medical Council Act would not exclude the services rendered by them from the ambit of the Act.",

learned counsel argues that the very essence of the above ruling of the Apex Court is that the scope of 'services' under

Section 2(1)(o) was extended to the medical profession only to the limited extent of direct medical services like consultation and diagnosis-cum-treatment pertaining to medicinal and surgical segments alone; while so, in the absence of any single allegation against the medical services rendered by the medical professionals who treated the patient in the OP, the endeavour of the complainant to build up a case by alleging deficiency in administrative services is wholly impermissible in law as it is nothing a but a vague attempt to expand the scope and scheme of the 1986 Act.

According to the learned counsel, the complainant has failed to substantiate and prove the vague allegations of deficiency in service and medical negligence with the expert evidence in line with the settled principles of law. Reference is made to the following text from the decision rendered by a three-Judge Bench the Apex Court in ***Devarakonda Surya Sesha Mani & Ors. Vs. Care Hospital, Institute of Medical Sciences & Ors. (2002 Livelaw SC 753)***,

> "Unless the appellants are able to establish before this Court

> any specific course of conduct suggesting a lack of due medical attention and care, it would not be possible for the Court to second-guess the medical judgment of the doctors on the line of medical treatment which was administered to the spouse of the first appellant. In the absence of any such material disclosing medical negligence, we find no justification to form a view at variance with the view which was taken by the NCDRC. Every death in an institutionalized environment of a hospital does not necessarily amount to medical negligence on a hypothetical assumption of lack of due medical care.",

and also to the following observation of the Apex Court in ***S.K.Jhunjhunwala v. Dhanwanti Kaur and Anr. (2019 (2) SCC 282)***,

> "43. In our opinion, no medical evidence of any expert was adduced by respondent No.1 to

prove any specific kind of negligence on the part of the appellant in performing the surgery (conventional surgery) of Gall Bladder except raising the issue of "nongiving of express consent". This issue we have already dealt with above and found no merit therein. In our view, respondent No.1 was under legal obligation to prove a specific kind of negligence on the part of the appellant in performing the surgery and also was required to prove that any subsequent ailment which she suffered on her return to home such as, jaundice, dysentery, fever, loss of weight etc. were suffered by her only due to improper performance of conventional surgery by the appellant and if the surgery had been successful, she would not have suffered any kind of these ailments.

44. In our opinion, there has to be a direct nexus with these two factors to sue a doctor for his

> negligence. Suffering of ailment by the patient after surgery is one thing. It may be due to myriad reasons known in medical jurisprudence. Whereas suffering of any such ailment as a result of improper performance of the surgery and that too with the degree of negligence on the part of Doctor is another thing. To prove the case of negligence of a doctor, the medical evidence of experts in field to prove the latter is required. Simply proving the former is not sufficient.",

to make a point that, in order to prove the allegations of service deficiency pertaining to medical negligence, there must be proper evidence or expert opinion adduced, whereas, in the present case, the complainant miserably failed to adduce any tangible document, medical evidence or literature or expert opinion to indicate any nexus between the death of the patient and the alleged negligence of the Hospital and on that ground as well as for the reason that the issues raised in the complaint may require consideration

of detailed evidence, it is not appropriate for this Commission to entertain the case of the complainant. In this regard, the following observation made by the Madras High Court in ***Miot Hospitals and Ors. Vs. Venkata Ramanaiah*** (cited supra) has been much highlighted –

> " 11. Considering the above position of law whether the death of the deceased patients are due to the `Act of God` or simple lack of care or mere negligence or high degree of negligence or recklessness are to be seen only in the trial on the basis of the evidence adduced before the trial Court. The Court after evidence come on record, "after considering the matter before it" has to decide the issue whether the facts placed before it are proved or not. The expression `matters before it' contain Section 3 of the Evidence Act includes the matters which do not fall within the definition of evidence. The expression matters also includes and takes within its fold

> presumptions, inferences and admissions etc., When the court finds a particular fact is to be proved, it has to take all relevant materials, legal presumptions and inferences into account. ***Whether high degree of negligence has been proved or not has to be seen only in the trial. This court cannot enter upon to the discussion merely on the basis of the submissions which required proof. In such a view of the matter, considering the allegations as against the petitioners, this Court is of the view that it has to be tested only in the trial Court***."

It is next submitted with a tone of much emphasis that though the averments and pleadings in the complaint give a picture as if it is a case of medical negligence, during the course of arguments only, the complainant's side further

developed the case as if it pertains to administrative negligence and the said attempt made to expand the scope of the complaint is not legally permissible. According to the learned counsel, the pleading and contention of the complainant that a heavy rain warning issued by the State Government & other Agencies on 28.11.2015 is bereft of any proof or evidence and the same has been categorically denied by the OPs in para No.14 of the written arguments. The large scale flooding that had occurred during the commencement of December, 2015 was completely unexpected and unforeseen, yet, during that challenging time, the Hospital had swung into action by making a wide array of decisions to ensure that no harm was ever caused to any patient. In order to demonstrate that the patients in the lower-level floors were immediately shifted to other elevated/well equipped floors for due care and management, attention of this Commission is drawn to Ex.B25, which is a report by Dr. Col.Trevor Nair, Chief Anesthetist and Head of the Disaster Management of the OP, and it is pointed out there-from that

- the disaster was managed as per the protocol of the Disaster Plan of the Hospital that has been earlier practiced and tested by the National Accreditation Board for Hospitals;
- the hospital correctly concentrated all its critically ill patients in one place viz., ICU of the International Building;
- Between the early hours of the morning and forenoon of December 2, 2015, anticipating failure of external electricity, the Hospital had installed back up equipments like UPS and battery to the individual electrically operated medical devices.
- Acquired manual ventilation equipments and 38 mega oxygen cylinders, each with a capacity of 6900 ltrs., were made available/attached to the Central Supply Unit to ensure that all patients receive oxygen.

- There were more than enough oxygen and medical supplies available at the II floor of the International Building.

Thus, the safety of all the 144 patients in the ICU including the 31 on Ventilator Support were well taken care of and, when no ICU was functional in the basement floor, the allegation that the OP has committed administrative negligence in dealing with the inundation at the basement point is rendered absolutely untenable and the whole edifice of the complainant's case built on such blatant lie falls to ground.

Also the very same subject matter viz., flooding of the Hospital, had already been dealt with by the Madras High Court in W.P. No.40385 of 2015 and the Court, in its orders dated 31.03.2016, had rejected all the imaginary allegations made against the Hospital regarding the deaths occurred during the floods and directed the police authorities concerned to file a final report after due investigation. Subsequent to the same, after conducting investigation, the police had dropped further action and also

filed a closure report. Therefore, any allegation of negligence much less administrative negligence would be a pure hypothesis which would in no way advance the case or cause of the complainant.

Further, with the same set of allegations, the complainant also filed a private complaint under Section 190 (1) (a) read with Section 200 Cr.P.C. before Judicial Magistrate No.1, Alandur, in C.C. No.1013 of 2017 and the said conduct of the complainant in filing Complaints before two different forums under different provisions of law is a clear instance of forum-shopping which may have to be taken a very serious note of by this Commission.

Ultimately, by re-stating that the complainant has not placed any tangible material to prove any service deficiency or administrative negligence against the Hospital, by citing the decision in ***Dr.Harish Kumar Khurana vs. Joginder Singh & Ors. (2021 (10) SCC 291)***, wherein the Apex Court ruled to the following effect:-

> "15. ..... Without reference to the evidence, mere assumption would

not be sufficient is the legal position laid down in the decisions referred above. ***Principle of res ipsa loquitur is invoked only in cases the negligence is so obvious***.",

and by submitting that the complaint built upon completely baseless and bald allegations does not attract the doctrine of res ipsa loquitur, learned counsel has sought for dismissal of the Complaint at the threshold.

7. This Commission has carefully perused the records and papers made available and, in the light of the lengthy rival submissions advanced on either side, the following issues arise for consideration:-

i) Whether the contention of the OP-Hospital that, in the absence of a single allegation of medical negligence or service

deficiency against the medical team of the OP that provided the treatment to the patient, the allegation of administrative negligence against them becomes irrelevant so as to sustain the complaint, is logically and legally well founded in the given factual circumstances?

ii) Whether the OPs' points of defence that the flood was unforeseeable, that they had a proper disaster management team, that the extraordinary situation created by the floods was well tackled by the said team by taking care of all the critically ill patients who were on Ventilator Support, that they had

more than enough oxygen storage at the central unit for uninterrupted supply to all the patients and that the Medical ICU unit, wherein the patient was kept, was not functioning at the Basement Level, have the effect and impact of destroying the case of the complainant?

iii) Was there really a breach of duty to care or administrative negligence on the part of the Hospital in the matter of ensuring continuous availability of life support viz., mechanical ventilator facility / oxygen supply, till the last moment of the patient, who was said to be dependent on

supportive breathing, for which purpose only, tracheotomy was performed to him at the OP Hospital?

iv) Whether the claims of the OP that the outcome of the PIL has also covered the negligence issue pertaining to the deaths of patients and that parallel private complaint before the Magistrate Court with the same set of allegation is suggestive of multiplicity of proceedings & forum shopping, are well-founded?

v) Whether the doctrine of res ipsa loquitur applies or not to the present instance?

vi) To what relief, the complainant is entitled to?

8. Coming to the 1st question, it is the argument of the OP that the pleadings in the complaint make it appear as if the complainant is alleging medical negligence, whereas, it is only during the course of arguments, the case has been so much developed to portrait as if it is an instance of hospital's administrative negligence. Nowhere in the pleadings, the line of treatment is ever found fault with nor the professional preciseness & acumen of the medical team is questioned; while so, seeking a very huge compensation over bald and unsustainable allegations of administrative negligence would amount to expanding the relief beyond the scope of the CP Act and such endeavor is legally impermissible. According to the OP, in terms of the ruling rendered in ***V.P. Shantha*** (cited supra), the services rendered by the medical practitioners alone would fall within the scope of 'service' as defined under Section 2 (1)(o) of the

Act and that being so, in the absence of any scope for medical negligence, no case can be maintained on the allegations of administrative negligence against the Hospital.

The above contention, in the view of this Commission, is quite untenable both logically and legally for a couple of reasons.

Firstly, the decision in ***V.P.Shantha*** deals with the aspect of negligence or service deficiency on the part of the medical professionals and that of the Hospitals as well and the said point is quite clear from the following observation made therein:-

> ***" ....*** *the composition of the Consumer Disputes Redressal Agencies as well as the procedure to be followed by them does not preclude a proper adjudication of the consumer disputes arising out of complaints relating to* ***deficiency in service rendered by medical practitioners and hospitals****. ...."*

When the above ruling thus pointedly says that both against the medical professionals as well as the Hospitals, consumer complaints can be maintained for alleged service deficiencies, the OP cannot be allowed to restrict the tenor of the decision with their own narrow interpretation.

The scope of administrative negligence having regard to the roles of Hospitals is concisely dealt with by the Delhi High Court in ***Indraprastha Medical Corp. Ltd. (cited supra)*** and the relevant passage is reproduced below:-

> "The hospital/company cannot be held liable for the personal negligence of the Doctor in giving wrong treatment. ***However, if there is an administrative negligence, or a negligence of not providing basic infrastructure, which results into some harm to an aggrieved person or such negligence which is impersonal, the hospital can be held liable***."

Pausing for a moment here, it is worthwhile to point out that the prevalent trend and scenario in the field of medical care provided by most of the multi-specialty hospitals like the OP is that they make tall claims that, under one roof, the patient is assured both treatment at the hands of the Professionals as well as a comprehensive infrastructural facility including full-fledged life support systems within their building premises; while so, if any harm or injury results to the patient due to the negligent failure of the Hospital in providing any of the essential life support facilities assured by them to the patient, the Hospital cannot argue that the administrative negligence is overshadowed by the precise performance of their medical team that is said to have rendered deficient-free services to the patient. Therefore, in a case of this nature, what needs to be tested is as to whether any harm or injury to the patient or his death had happened due to the administrative negligence or service deficiency of the hospital.

In this regard, a reading of the complaint as a whole would go to show that the grievance of the complainant is

definitely not in respect of the medical treatment provided in the hospital at the hands of the Medical Professionals. Merely because the complainant expressed certain grievances that the Doctors did not allow her to stay along with the patient and the discussions with the Doctors were very brief, etc. it does not mean that she has alleged medical negligence, whereas, the only allegation around which the entire pleadings revolve is that the loss of human lives was allegedly due to the lack of preparedness and failure on the part of the Hospital to take preventive measures despite the prior weather forecasts and warnings. When the contents of the complaint clearly spell out that the allegations only pertain to negligence on the part of the hospital administration, there is no point in stating that absence of specific grievance or allegations regarding the medical services provided to the patient would disentitle the complainant from alleging administrative negligence.

When an ailing person visits a Hospital, he or she does so with an expectation that he would get proper medical care from the professional hands as well as the

infrastructural amenities made available at the Hospital; as such, when hospitals provide medical care in two segments viz., professional services through the Doctors engaged by them and provision of medical facilities & amenities at their own disposal in the form of ECG, X-ray, Scans, Ventilators, Dialysis Machines, Attached Diagnostic Lab, etc., in law, the individuals who administer hospitals are under the same responsibility as that of a Doctor having due regard to the pattern of duty owed by each side towards the patient in terms of professionalism by the Doctor and provision of facilities and amenities by the Hospital connected to the treatments provided and procedures performed thereat. It is of common knowledge that, under the concept of integrated medical care & services provided in the Multi-specialty hospitals, however expert a medical surgeon may be, he cannot lay his hands on the patient requiring an urgent invasive procedure, in the absence of requisite infrastructural facilities like a fully-equipped operation theatre, life support systems, etc. Professional expertise and assistive infrastructure are inseparable and always go

together to make the medical care meaningful in multi specialty hospitals providing integrated medical care. When such Hospitals receive tangible consideration or fees from the patients, in particular the in-patients, for providing integrated medical care, they owe a legal duty and responsibility for the patient's safety, health and hygiene during the entire stay by ensuring standard medical care and services from qualified professionals along with availability of all necessary clinical equipments and facilities as well as appropriate staffing. Such responsibility becomes greater and higher where the Hospital claims itself to be an unique entity in providing the integrated medical care as in the case of the present OP which has made a clear statement on that line in their own written version thus:-

> " 2. …MIOT is the largest private sector first hospital in our State of Tamil Nadu. It is not without reason why patients from more than 100 countries flock to MIOT and entrust their dear lives to the doctors at MIOT to try and cure

> them for better. It is not without a reason that more than 12000 highly complicated surgeries, many of which are only being done in select centres Abroad are being done in the premises of the Opposite Party. …. ***MIOT hospitals is one of the very few hospitals in the city where all the doctors are full time practitioners in the hospital, so that 24 X 7 uninterrupted attention is given to each patient admitted in the hospital***. ….."

Thus, the Hospital boasts of their uniqueness that they provide 24 x 7 medical care which inherently means that the patients would get both professional care and infrastructural support required for the treatment without any interruption. That being so, when it is alleged that there was a failure in the medical infrastructure due to the negligence of the Hospital in tackling a foreseeable calamity that is said to be the contributing factors for the deaths of the patients, the

OP cannot simply wash away the responsibility by contending that administrative negligence cannot be attributed in the absence of direct medical negligence. When the decision in ***V.P.Shantha*** has brought the services of the medical professionals within the anvil of term 'service' as defined under the CP Act and when the said decision does not differentiate between the SERVICE DEFICIENCY of the professional or Doctor as well as the Hospital and when consumer fora deal with the instances of hospitals' administrative negligence in the same manner as that of any other service deficiency, the OP cannot be allowed to hide behind the professional acumen of the Doctors against whom no allegation is made and to argue that, in the absence of medical negligence, they are not answerable for the alleged administrative negligence. In such circumstances, there is no point in delving into the medical literature and other papers submitted on the side of the OP dealing with the issue of medical negligence, which is irrelevant owing to the facts and points revolving around the

other segment viz., administrative negligence. Accordingly, issue No.1 is answered against the OP.

9. Now, let us deal with question Nos.2 & 3 together in a segment – was there any lapse or administrative negligence on the part of the Hospital and if so, whether such negligence had the impact of causing any harm to the patient so as to result in his death as a contributing factor.

On these points and issues, it is the stand & defence of the OPs that : -

a) they had no prior information or warning about the heavy rains that caused the floods and as such, it was only an instance of vis major;

b) the Hospital had a proper Disaster Management Team which had swung into action and it was ensured that life support facilities were available/restored even during

those challenging hours; as such, no casualty happened as a direct impact of the calamity;

c) there is no nexus between the inundation of the hospital premises and the death of the patient, who succumbed to the serious health complications of brain stem hemorrhage, kidney injury, etc. and that the death certificate issued by the OP stands corroborated by the Post Mortem Certificate under Ex.A4 and, on the face of it and in the absence of Expert's Opinion, the allegation of death due to any negligence is completely enervated.

Before any further discussion into the facts and issues on the above aspects, one of the core points that need to be looked into is regarding the yardstick for proving the administrative negligence alleged against a Hospital.

In matters of medicinal or surgical related medical negligence attributed to the professionals, generally opinion of experts in the field would serve as barometer to discern

and appreciate the existence or otherwise of negligence in the light of the facts and circumstances involved; whereas, such opinion is not necessary in matters pertaining to administrative negligence or service deficiency alleged against Hospitals as the same can be proved by way of affidavit and corroboratory documentary evidence. Once an allegation is made in the affidavit of the complainant that the patient admitted in the hospital had died because of service deficiency on the part of the Hospital or their failure to provide uninterrupted access to life support facilities as assured by them and that such failure was due to their negligence in anticipating a foreseeable & avoidable mishap, it is for the Hospital to prove otherwise that there was no negligence or service deficiency on their part, as alleged. The reason is, it is the Hospital, which alone is in a position to disclose the vital details like the location of the infrastructure & facilities in their premises and that of the Units like ICU/MICU to keep the critically ill-patients, the safety aspect of such locations that they are not susceptible to easy inundation, perils, etc, the steps and care taken by

them as per their assurance given to the patients that the medical services and the infrastructural facilities for treatment would be available to him/her on 24 X 7 basis, etc. It must be once again stressed here that, in respect of Hospitals providing integrated facilities under one roof, the duty to care is a not a onetime affair, rather, it is a continuing obligation which the Hospitals owe to the patients till they leave the Hospital upon recovery. Breach of such duty even if it is without any intention but "due to lack of foresight" would attract a 'strict liability' for which the Hospital shall be held liable under the consumer law on the principle of 'duty to care'. In that perspective, what needs to be now looked into is as to whether the Hospital has discharged the burden of proof sufficiently by disclosing all necessary details and materials at its own disposal to disprove the allegation of administrative negligence which is said to be the contributing factor for the death of the critically ill patient.

In this regard, the specific statement made by the OP Hospital in the written version is:-

> " 9. The opposite party hospital suffered a great loss due to the inundation on 01.12.2015. .... The safety of all the 144 patients in the ICU at that time and 31 of them were on ventilator support, and all of them were taken care of. ....."

Thus, it is their specific claim that, despite the havoc caused by the floods that started inundating their premises from 01.12.2015 onwards, not only the safety of all the 141 patients in the ICU was ensured but also 31 amongst them, who were on ventilator support, were also taken care of; as such, there is no veracity in the claim of the complainant that the patient was deprived of mechanical ventilation subsequent to the power outage.

Pausing here, it would be of much relevance to look into the clinical condition of the patient - as to whether he was in the incessant need and requirement of life support/Mechanical Ventilator at the relevant point of time and whether he was deprived of such support after the

impact of the flood which is said to be the contributing factor for his death, as claimed by the complainant.

From a perusal of the medical records, in particular Ex.B2 – Medical Case Sheet containing Doctor Notes that cover the details of the patient's day-to-day clinical condition and the treatment provided to him at the OP from 17.11.2015/date of admission to 02.12.2015/date of death, we find that the patient was admitted in the OP with some major health complications viz., Brain Stem (Pontine) Haemorrhage and recurrent seizures/status epilepticus and also life-style diseases like Diabetes and Hypertension and he was intubated and on Ventilator support. On 18.11.2015, he was on VC mode in the Ventilator with a specific recording that '***CT Angio rules out Vascularpathology***". From the said entry that VC (Volume Controlled Ventilation) mode in the ventilator was activated, it could be discerned that the patient had no spontaneous breathing then. From Page No.15 of Ex.B2, it could be seen that, on the next date, that was on 19.11.2015, he was on ventilator and the clinical plan was for "Tracheostomy & To

stop sedation tomorrow…". Further entries made on the same date shows that the patient continued on Ventilator and the "Plan" entry made is "TRACHEOSTOMY AT THE EARLIEST", which is a procedure to create an opening in the front neck, made mostly below the Adam's Apple, in order to place a tube into the windpipe of the patient who lacks breathing capacity, so as to cater to the need for his prolonged respiratory/ventilator support. Let us extract the relevant lines from Ex.A2, covering the relevant events connected to Ventilator Support from 20.11.2015 onwards, for clarity purpose:-

> *"20.11.2015 10 AM.* ***On Ventilator – Control Mode****, Sedation,* ***No further episode of Seizures – Vitals maintained*** *…. **Plan** – Early Tracheostomy & Wean off Ventilator …. EVENT NOTED –* ***TRACHEOSTOMY DONE TODAY MORNING.*** *…. At 2 PM. – Pt. on tracheostomy &* ***VENTILATOR VC MODE*** *– NOT ON SEDATION.*

21.11.2015 9.30 AM. ***On Ventilator – 10 AM. Patient has not had seizures since 2 days*** *–* ***On VENTILATOR THROUGH TRACHESTOMY TUBE*** *–* ***VITALS MAINTAINED. NO FURTHER EPISODES OF SEIZURE****.*

21.11.2015 10.50 PM. ***PATIENT ON MV (Mechanical Ventilator) SUPPORT ON CPAP*** *… - OFF SEDATION OFF INOTROPES – TRACHEOSTOMY IN SITU.*

22.11.2015 9 AM. – ***ON VENTILATOR*** *– OFF SEDATION. … 10.30 PM.* ***PATIENT ON MV SUPPORT ON CPAP****…Tracheostomy in situ – Off Sedation.*

23.11.2015 Case Reviewed – ***VENTILATORY DAY 7*** *–* ***Oxygenation Satisfactory. …. Hemodynamically stable. No further seizure****. … 4 PM. Case Reviewed …* ***Patient on Tracheostomy T.Piece O2 Support***

(trial) *…. 11 PM. Patient on T.Piece Support …*

24.11.2015 9.45 AM … ***TACHYCARDIA … 10 AM. PATIENT COMATOSED. …. 6.45 pm. Tracheostomy D-4. Patient had 1 episode of seizure today … Patient on 'T' piece through tracheostomy tube….. 10.35 pm. case reviewed – put on trach – T. piece. … 11.30 PM. … Patient on Tracheostomy T.Piece D4.***

25.11.2015 10 AM. – On T-piece trial through tracheostomy tube. … 2.45 pm. patient on T piece. … ICU day 7. Off Ventilator …. 9 pm. patient on Tracheostomy T. piece …

26.11.2015 9.10 a.m. … On T piece… 10 AM. On T-piece Trial. 10.40 AM. Patient on T Piece Trial. … 1.30 PM. Case reviewed – Tracheostomy Day-6 … Patient on T piece through Tracheostomy Tube. … 11.05 PM. Pt. Trach-CPAP Mode.

27.11.2015 10 AM. On ventilator through tracheostomy tube ... 11.40 AM Patient on Ventilator Support through Tracheostomy on PC Mode ... 9 PM. Patient on Ventilator through Tracheostomy/PC Mode on inotrope support.

28.11.2015 8.45 AM. ... Patient on PD on Ventilator PC Mode.... 10 AM. On MV Support. ... 10.45 am. on Mech. Ventilator Support on PCM. ... Ventilator Day 12. .... 10 AM. On Ventilator .... 4 PM. Pt. on Tracheostomy C Ventilator PC Mode.

29.11.2015 ... 5.15.PM. Pt. on mechanical ventilator through tracheostomy tube on PC mode.

30.11.2015 2.52 AM. ... Pt. on Ventilator D.13 Tracheostomy tube (PC Mode) ... 7.30 AM. on VC Mode Ventilation. 10.30 AM. On Ventilator – T-Piece Trial.

01.12.2015 1.30 PM., Patient on Ventilator through

Tracheostomy ... Plan: Cont. supportive measures.

02.12.2015 10.30 AM. ... WORSENING GENERAL CONDITION – ON AMBU VENTILATION; WORSENING SHOCK....

02.12.2015 5.10 pm. Pupils dilated and fixed. Inj. Adrenaline / Atropin. Patient had a cardiac arrest & could not revive & declared dead on 5.15 p.m., 2.12.2015.

CAUSE OF DEATH:- REFRACTORY STATUS EPILEPTICUS; PONTINE HAEMORRHAGE, SEPTIC SHOCK, ACUTE KIDNEY INJURY. ”

The above extracted doctor’s notes from Ex.B2 Series although unfold the actual clinical condition of the patient in terms of his need for mechanical ventilator support, it would be also proper to deal with the manner in which the case sheet under Ex.A2 has been prepared, in that, the Doctor’s Notes are presented Date & Time-wise upto Page No.53. Although some overwritings and time variations could be

noticed in between those running pages, the recordings made between page No.54 and 59 carry abruptly jumbled date & timings as follows:-

"	Page No.54	27/11/15	10 AM.
	Page No.55	**28/11/15**	**10.30 AM.**
	Page No.56	27/11/15	10 AM
	"	"	11.40 AM/PM. (hard to infer either AM or PM due to over-writing)
	Page No.57	27/11/15	5 PM.
	Page No.58	27/11/15	9 PM.
	Page No.59	**28/11/15**	**8.45 AM**.
	"	**28/11/15**	**10.45 AM**.
	Page No.61	28/11/15	No timing
	Page No.62	**28/11/15**	**10 AM**.
	"	**28/11/15**	**4 PM. "**

The Doctor Notes in respect of 28.11.2015 are glaringly muddled up at different pages with the first timing/10 AM. and the last timing/4 PM. at Page No.62, 10.30 AM. at page

No.55 - and 8.45 AM (with a visible over-writing of the number 8) &10.45 AM. at page No.59. Similarly, while page No.67 carries the notes about the events on 30.11.2015, the next page – that is page No.68, bears the date 1/11/2015 with clear struck off spaces against the entry Pt. (Patient on) and all these slipped & whimsical writings suggest something fishy that the Hospital is not transparent and their endeavour is to just project that a good medical care was given to the patient and that there being no medical negligence, the issue of any administrative negligence cannot be raked up.

At any rate, from the doctor notes in Ex.B2, it can be emphatically said that the patient could not breathe on his own and all alone, he was managed all with supportive tools. In fact, the Written Version of the OP themselves carry a narrative in the following terms about the clinical condition of the patient regarding his incessant need for life support/Mechanical Ventilator:-

> " 6. … the complainant's husband was admitted at the MIOT

Hospitals on 17.11.2015 and **REQUIRED VENTILATOR SUPPORT DURING HIS ENTIRE STAY IN THE HOSPITAL**.

7. ... The Opposite Party submits that tracheostomy is offered to patients who require long term ventilation and that the patient's own breathing efforts were not showing signs of recovery. The Opposite Party **CATEGORICALLY DENIES THAT ANY OF ITS DOCTORS EVER INFORMED THE COMPLAINANT ON 01.12.2015 THAT THEY HAVE REDUCED VENTILATION SO AS TO ALLOW HIM TO BREATHE ON HIS OWN.**

9. ... Mr.Kalaiarasan apart from having brain stem Haemorrhage which is very very serious condition, had lung failure for which we have to put him in the

ventilator. He had kidney failure, so we have to dialyse him. …"

A side-by-side reading of Ex.B2 and the above contents in the version gives a clear picture that the patient, who had lung failure, was in the acute and continuous need of not only Ventilator Support for breathing but also he required dialysis on routine basis, which means, in the absence of such life support facilities, no best treatment could benefit him. The complainant also seems to be very focused in getting the core detail about the obvious complication visible in her husband that he lacked spontaneous breathing faculty and that tracheostomy was the procedure performed on him to ensure assisted breathing by putting him on ventilator support and accordingly, she has made a clear averment at para No.8 of the complaint. Therefore, the entire records made available by both sides indicate that the patient was in the dire need of Mechanical Ventilator Support for breathing purpose and he also needed dialysis for kidney failure, which means any interruption in the

availability of such facility would render the medical treatment useless.

At this juncture, the clinical events recorded for 01.12.2015 and 02.12.2015 need to be very carefully examined in a perspective as to whether the life support was available to the patient on 01.12.2015 & 02.12.2015 and whether the claim of the OPs that, despite the extraordinary situation, they had well taken care of all the 31 patients that included the complainant's husband as well, who were on ventilator facility, is correct or not.

At the risk of repetition, let us once again extract below the relevant portions from the written version in this regard:-

> " 9. ... The safety of all the 144 patients in the ICU at that time and 31 of them were on ventilator support, and all of them were well taken care of.
>
> 15. The Opposite Party states that the ***deaths of hospital patients between***

2.12.2015 and 4.12.2015 is due to different reasons as each patient was undergoing intensive care for serious illness. …"

On that basis, it is the argument of the Hospital that they took care of availability of life support to 31 patients, who were in need of the same and that the deaths of the patients between 02.12.2015 and 04.12.2015 is not due to any life support failure but it was due to their own critical health complications. But, such claim is totally dismantled by the following two documents–

a) Doctor Notes from Ex.B2 for 01.12.2015 and 02.12.2015
b) Ex.A3-FIR/Statement given by Dr.Nisheeth, who is the HOD of the OP's Intensive Care.

Firstly, as already dealt with extensively, the date-wise medical notes upto page No.67 which corresponds to the date 30.11.2015 contain the routine treatment course and the condition of the patient noted at intervals in the course of the day, whereas, for 01.12.2015, the only noting made was at 1.30 PM when the patient was mentioned to be on

Ventilator through tracheostomy. Obviously, no entry is made for the rest of the day and importantly, it was the day when heavy rains started to generate the floods and, in such a situation, absence of further medical notes gives room for adverse inferences. The entry for the next date/02.12.2015 at 10.30 AM. clearly says that the patient was on ambu ventilator, which is a manual set and a combined reading of the said entries for those two days reveal that the patient had no access to Ventilator Support after the flooding and the consequential power outage on 01.12.2015 and he was somehow managed with manual support which did not work for him like a mechanical ventilator and that is why, the next day entry on 02.12.2015 says 'worsening shock' upon deployment of ambu bag; thus, as a result of non-availability of life support, he could not succeed in his clinical battle for survival.

Secondly, the first-hand information provided to the Police in the form of Ex.A3/FIR, dated 04.12.2015, by none else than the HOD of OP's Intensive Care/Dr.Nisheeth is very informative and, in the said statement, he not only

mentions about the devastating nature of the flood that had submerged the hospital but also clearly pinpoints the reason for the death of the patients as failure of the life support system due to power outage caused by flooding. The relevant portion from Ex.A3 is given below for a ready reference

> "….This is to inform you, following the heavy rain and flooding in Chennai **on 01.12.2015** which resulted in heavy water inundation and ***flooding of power panel room inside the hospital, which led to power failure forcing our life support system to fail. Despite our best efforts to save the patients by manual ventilation for a prolonged period, the following patients***

***succumbed*:- .... 7) Kalaiarasan, C**

– 444146. ....”

The above information reveals the following

- the Hospital suffered inundation due to floods from 01.12.2015 itself;
- The flooding had affected the entire power panel rooms which means those Units were housed only at the Basement or lower levels;
- Resultantly, there was a complete failure of the life support system that includes mechanical ventilators & dialysis machines meant for the critically ill-patients at the Medical ICU; and
- the patients kept in the Medical ICU were not able to be managed with manual ventilation/ambu bags for a longer duration and resultantly, they succumbed due to obvious life support failure.

Again, if we read the Doctor’s Notes pertaining to 01.12.2015 and 02.02.2015 in the context of the first-hand details

provided by Dr.Nisheeth, who is said to have witnessed the whole scenario and reduced it into a statement before the Police, it is glaringly apparent that it was till 1.30 PM. of 01.12.2015, the patient was on Mechanical Ventilator and it seems, soon after the power outage happened on that date after the flooding, the Ventilator facility went off due to failure of life support system. That is why, as already stated, no further entries are available for 01.12.2015 except what was recorded at 1.30 PM. Now, the entries for 02.12.2015 clearly indicates the loss of life support/ventilator facility from the notings that his general condition started worsening after he was managed on manual ventilator/ambu bag which is a handheld tool designed to deliver positive pressure ventilation to any subject with insufficient or ineffective breaths. It is of common knowledge that a person, who had lung failure and whose breathing was managed during the whole course of treatment only with mechanical ventilation, cannot be managed in the same way with a handheld/manual tool that too for a long duration. As such, there is no difficulty to

infer that, although the patient was under greater risk owing to his own serious health complications, as stated in a very clear-cut and transparent manner by Dr.Nisheeth, after the life support failure, the manual tools could not help much to manage the breathing and the said recorded fact cannot be eclipsed by the elusive and misleading claims made in the written version of the OP. The statement of Dr.Nisheeth covers a long-list of patients including the complainant's husband who could not get life support after the power outage and the one single fact that it is a collective death of 14 persons as on 04.12.2015 for the same reason that their breathing could not be managed with manual ventilation or ambu bags is so formidable that it cannot be shaken by any assertions of the Hospital that they took every care for all the patients on Ventilator Support and that there is no scope for any administrative failure or negligence.

Now, let us deal with the concept of administrative negligence arising from the breach of duty to care on the part of Hospitals.

In simple terms, Administrative negligence on the part of a hospital typically arises from an overarching failure on their administrative perspectives like failure to provide proper sanitation & tools, placing unqualified persons in supervisory positions, Hiring employees with questionable qualifications, deficiency in safety requirements, etc., but, in an instance of this nature, where it is said to be the failure to take necessary prior preventive measures anticipating rains and floods, merely because the power outage and the consequent life support failure was caused due to heavy flooding, the Hospital authorities cannot on that account alone seek to be absolved without showing something further to indicate that preventive and proactive measures were taken well in advance and that, despite their anticipatory measures, the mishap had become inevitable. When the Hospital is in the position of the Occupier and the patient is the invitee or visitor, who is invited by the Hospital for availing medical services along with a comprehensive clinical infrastructure on payment of consideration, if negligence is alleged in regard to the maintenance of the

Building, Structure and the facilities made available in their premises, the Hospital is under an obligation to present all materials at their disposal to show otherwise. Therefore, unlike the case of medical negligence where the patient/complainant is required to prove the professional negligence by adducing expert opinion and medical literature, in a case of this nature connected to administrative negligence, the burden of proof lies upon the Hospital to establish that all necessary and reasonable care was taken by them to prevent the harm that was possible from a foreseeable calamity or danger.

While it is the blunt denial of the OP that they had no information at all about the heavy downpour which had happened in December, 2015, the contention of the complainant is that only some days before the heavy rains that caused the unprecedented flooding, in the middle of November itself, the hospital vicinity had suffered inundation due to the rainfall then occurred and further, even on 28.11.2015, the weather forecast and updates circulated through various media sources had attracted the

attention and observation of almost everyone that there would be a heavy downpour from the end itself of November, 2015; therefore, despite the ability to foresee and diligently prepare for any emergency situation that was well fathomable from the weather forecasts frequently updated, the administration of the Hospital deliberately failed to take any real anticipatory measure to protect the power units and the critically-ill patients kept at the lower floors from the floods of invasive nature and such obvious failure of the OP clearly depicts their glaring administrative negligence. This Commission finds considerable force in the contention of the complainant for a couple of reasons.

We are living in the age of advanced modern technology and weather updates are available on all gadgets including the mobiles held by everyone. It is well documented that the media coverage on weather conditions was wide and extensive at the relevant point of time to covey that that, from late October, 2015, the North East Monsoon commenced and that 3 synoptic weather systems formed over the Bay of Bengal. In November – December, 2015, the

unprecedented rains are reported to have taken place in 4 spells. It is also the recorded fact that there was a deep depression over the Bay of Bengal between 8th and 10th November, 2015 and again, there was a low pressure area over South-West Bay of Bengal between 12th November and 18th November, 2015 and further, the reason for the floods during December, 2015 was the low pressure area over the south West Bay of Bengal which existed between 28th November and 4th December, 2015. The said weather pattern which was prevalent for a month or so and able to be viewed and sensed by everyone itself was sufficient for those who were in low lying areas to take suitable measures to avoid & prevent the perils of flooding. No Agency would give cautions after the eruption of floods and rains and it is the uniqueness of weather reports/forecasts that they are all predictive in nature enabling the people to foresee the calamity warned of and to be prepared for the situations. Therefore, when the information about the low pressure area over the South West bay of Bengal was in the nature of a fore-warning and when the prevailing weather conditions

before the heavy downpour that generated the floods had presented a live warning for an impending calamity, it is highly unfortunate to hear from a prestigious Hospital like the OP that they never had any particle of information about the rain warnings or weather system and that the flooding was a sudden happening to term it a Vis Major. Even mini clinics at their reception halls and visitors' corner have Wide TV Screens with standard display of contents mainly from News Channels. While so, the administration of the OP, which is said to have all types of sophisticated tools, was not even able to grasp the usual weather updates frequently provided in different news channels and failed to caution their Disaster Management Team for taking anticipative measures in order to protect the power panels as well as the patients said to have been kept at the lower levels of the building that is vulnerable to inundation. Therefore, on the face of the documented facts about the weather condition details that had reached one and all, to say that no information was ever received to prepare themselves for the

situation only reflects the OP administration's inability even to read the reality taking place around them.

Secondly, with the advancement of technology that has overwhelmingly dominated the medical field, it is the undeniable fact that, without parallel facility of requisite medical equipments from the range of ECG to Extreme-level diagnostic tools as well as life support gadgets, mere handwork-cum-expertise of the professionals alone would not completely help the patient who is supposed to undergo delicate procedures with the side-by-side utility of clinical technology. Similarly, no technology would ever function without power and only to avoid a perilous situation arising from failure of the tools due to blackouts, almost all Hospitals have Generator Units installed in their premises for power backup. While his surgical knife is on the patient, no doctor would even dare to imagine a situation of complete power failure that happens due to the generator set going faulty owing to the negligence of the hospital administration. That is why, every Hospital would be hyper-vigilant and would take extraordinary caution in installation of power

panels and back-ups only at such spaces in their vicinity that cannot be so easily affected by floods and other perils. While so, in the case of a hospital like the OP which is located in a low-lying area and having close proximity to the River, the first and foremost priority & precaution should be to house the power rooms and generator units at safe spaces that are not vulnerable to flooding and other risks, but it seems, it is not so. By magnifying the numeric figure that the Hospital is about 193 meters away from the River and that there stands a Chocolate Factory as a barrier, the Hospital may endeavour to give a picture as if their building is not prone to flooding. They should know that it is not 193 Kms. but it is just 193 meters which is equivalent to 633.202 feet / 0.193 Km. Similarly, the argument that the building stands about 10 mtrs. above the sea-level would in no way advance their cause for the simple reason that it would not reduce the vulnerability to flood due to the building's close proximity to the river. At any rate, from Ex.A3, it could be well discerned that the power rooms had been located only at the basement level or a low-lying space;

as otherwise, the whole power unit would not have suffered inundation had it been installed at an elevated space. In other words, the Hospital has a giant building structure and therefore, it must have had a massive power unit and unless such unit suffered inundation for a level of more than a couple of meters, it would not have sustained complete failure. Since it is inferable now without any difficulty that the Power Panels and Generator Units were located at a space vulnerable to flooding and that the Hospital Administration was very lethargic in taking preventive measures before the foreseeable rains by diligently acting upon the weather forecasts, it can be safely concluded that the power failure caused by flooding was due to the OP's administrative negligence.

As already pointed out by us, in order to dispel the various ambiguities surrounding their defence, the OP could have presented before this Commission all the materials at their exclusive disposal about the actual location of the power panel rooms and that of the Medical ICU where the miserable victims were kept; out of the 31

patients, who were on Ventilator support, how many of them were from the Medical ICU and who were all from other Units; how the International Block is said to be unaffected while the Block meant for local patients alone suffered great damage, etc. But, the conduct of the OP in repeatedly making blunt denials and empty statements not supported by material particulars that the ICU was not functioning in the basement and in not disclosing the details regarding the location of the power units and for what purpose the basement was utilized and in brazenly coming up with a false claim that all 31 critical patients on Ventilator, were all well taken care of, only shows that they attempt to succeed by playing a hide-and-seek game so as to escape the liability arising from the negligence. As already stated, on the face of the statement of none else than their own Doctor-Dr.Nisheeth which gives a different account to clearly infer administrative negligence, the only course left open for the OP Hospital is to discharge the burden of proof by producing those documents that have relevance to the point of administrative negligence, but, the Hospital completely

misdirected itself in defending its case behind the shield of medical diligence and smartly resorted to ceremonial denial of facts bereft of particulars regarding the core aspects of location of the ICU as well as the Power Panel Rooms. Even during arguments, the OP has not come forward to spare those crucial details and it is only from the Ex.A3 - FIR filed at the instance of their Doctor, this Commission is able to decrypt the reality behind the facts, as discussed above. It is the version of the OP themselves that the flooding was such that except the in-house staff, others could not come to the Hospital during the flooding and they had to contact the Rescue Agencies to gain access; while so, with the minimum medical team and staff available inside the hospital in a challenging time when the life support facilities and the basic infrastructure including lights, computers, ECG machines, Mechanical Ventilators, dialysis machines, etc. became useless, the claim of the OP that they were able to take care of the 31 critically ill patients on mechanical ventilators is highly farcical. The factors that the OP Hospital is located in a low-lying area, that Power

Panels/Rooms were located therein at places prone to inundation, and that the administration was not diligent enough to either read the foreseeable weather conditions conveyed through various sources or to be alive to the weather changes that happened before their own eyes during the relevant time during November-December, 2015, to take anticipated measures for protecting the power rooms and suitably shifting the patients at the low-level spaces, manifest clearly the administrative negligence on the part of the OP.

Regarding the shifting of patients, there are two contentions made by the OP that – firstly, it was not feasible to transfer the patients to another hospital for different reasons and the emphatic stand taken in the written arguments filed by the OP is as follows:-

> "9. … As the complainant suggests, it is not feasible to transfer patients to another hospital due to a variety of reasons, some of which being: a) some patients being in too critical a condition to be transported

> b) It is not practical to assume that there would be facilities to provide the same standard of care or even place to accommodate a large amount of patients in such short notice; c) it is impractical to initiate an evacuation of such proportion for every single rain warning, especially owing to the very unpredictable weather conditions in the State; d) during the flooding, no one could either enter or leave the hospital premises; and e) even the Army could not enter the hospital premises for carrying out relief works till the Adyar River receded."

and secondly, the Hospital had a very good Disaster Management Unit headed by Dr.Col.Trevor Nair, who has given exhaustive details about each and every step taken to ensure oxygen supply and to restore the electricity back-up.

Coming to the first contention, it appears that the said stand as projected in the written arguments is nothing but a smart excuse and actually, the OP had acted only otherwise as could be seen from their own written version at

para No.16 and the relevant portion given below reveals the following:-

> " ... ***The MIOT has taken necessary steps for the rescue and assistance to the patients by shifting them to the other hospitals in the city***. "

The above statement in the version shows that it is only after suffering the impact of the flood, the Hospital swung into action by shifting the patients to other hospitals in the City. While so, their present contention as could be seen from the above extracted portion from the written arguments lacks logical flavour and reflects the lack of foresight and the glaring recklessness of the administration in tackling the situation. One of the reasons stated by them that it is not feasible to accommodate a large number of patients in such short notice is quite absurd for the reason that, even according to the OP, the high-risk patients on Ventilator

were 31/less than 3 dozen in number and there would not have been any difficulty for the hospital administration to contact the Health Department of the Government to accommodate them suitably in appropriate Government General or Multi Specialty Hospital and, without taking such precautionary measures, pursuing the efforts to transfer the patients only after much water had flown and simultaneously taking a stand now that such transfer efforts were absolutely impossible not only shows the negligent conduct of the Hospital but also their sly endeavor to deliberately mislead the Commission with twisted facts and hence, the said contention has to be out-rightly discarded.

Coming to the second contention of the OP, reference is made to the Disaster Management Report under Ex.B25 to highlight the aspects that their Disaster Management Unit immediately swung into action, bringing the situation well under control and that, in fact, even oxygen and power supplies were also restored. But, unfortunately, the said Report cannot be given any face value at all to appreciate the defence points and it would in

no way help the OP for the simple reason that the hospital had suffered inundation even on 01.12.2015 and, as per the report under Ex.B25, the Disaster Management was activated after much water has flown, for, the said Report itself speaks that the Head of the Team/Dr.Trevor received the information about the flooding only at 2.30 AM. on 02.12.2015 and he could reach the Hospital only during the dawn and by that time, some of the patients including the complainant's husband had passed away due to failure of life support facility and hence, the report regarding the subsequent steps taken cannot be given any credence or face value. The basic concept of any Disaster Management is that it works on pre-emptive basis with anticipated preparedness plans to prevent the danger and mishap by vigilantly reading the alerts and cautions issued by the authorities and agencies concerned. That being so, any action taken after striking of the calamity, causing loss to human lives and essential infrastructure, cannot be claimed to be disaster management but it can only be said to be a rescue operation.

Although we have held that the Disaster Management Report is not helpful for the defence of the OP and hence, it need not be looked into for that perspective, however, for the purpose of getting a picture about the ground reality prevalent at that time, the same can be looked into and a perusal of it gives some important details and the same is extracted below:-

> " 02nd Dec. **04.30 AM TILL FIRSTLIGHT (DAWN)**. … Patients has already been shifted in from Medical ICU. Medical block was already evacuated. Electricity was on (By Generator EB supply cut early night).
>
> " 02nd Dec – **DAWN** – As dawn broke realized that the water level was rising fast and the flooding was getting worse not better. **Instructed the medical gas plant man to shift all O2 and Air cylinder to the POW (II Floor).** … The last generator also got flooded and came on to UPS power supply. … AFTERNOON – The UPS System

gradually stopped and we came on the internal battery backup of ventilation and monitors (that would last for 1 hour). **They also stopped, by then we distributed Ambu bags to all ventilated patients**. …. **NIGHT** … Had earlier obtained torches from all the OPD's and a FEW CANDLES distributed them to the wards and doctors. ***SOME OF THE PATIENTS THAT WERE CRITICALLY ILL AND ON MECHANICAL AND PHARMACOLOGICAL LIFE SUPPORT GRADUALLY SUCCUMBED DURING THE NIGHT***.

*- THE HOSPITAL CORRECTLY CONCENTRATED ALL ITS CRITICALLY ILL PATIENTS IN ONE PLACE (****ICU OF THE INTERNATIONAL BUILDING).***

- ***IT IS AGAIN REITERATED THERE WAS MORE THAN ENOUGH OF OXYGEN AND MEDICAL SUPPLIES AVAILABLE ON THE II FLOOR OF INTERNATIONAL BUILDING***. "

The above contents show that the Medical ICU, which is said to be the Unit where the husband of the complainant was kept, is the worst-affected place; that the electricity supply was off from the early night/01.12.2015, that the water inundation seemed to have submerged almost the first floor and that the situation was not manageable with a single Generator and by the afternoon of the 2nd December, there was a total collapse of even the last means of power source and more importantly, only those critically ill patients who were on mechanical and pharmacological life support started succumbing during the night due to loss of such ventilator and life support facilities. With an emphasis, it is recorded by Dr.Trevor that more than enough oxygen and medical supplies were available only at the II Floor of the

INTERNATIONAL BUILIDING which only goes in line with the allegation of the complainant that the International Block is better placed in terms of comprehensive facilities compared to the Regular Block. As such, the statement of Dr.Nisheeth under Ex.A3 as well the Report under Ex.A25 almost speak in the same tone for drawing the only probable inference that although the patients were critically ill, it is only upon failure of ventilator and life support equipments, they struggled for survival and succumbed ultimately due to the cumulative effect of serious illness and deprivation of life support that served as a contributing factor for their death, however, the additional information available in Ex.A3 is that it lists out the names of the patients including the complainant's husband who died due to loss of life support facilities like mechanical ventilator. It is also appropriate at this juncture to reproduce below the observations on facts, although prima facie in nature, made by the Madras High Court in its common order, dated 01.02.2022, passed in Crl.O.P. Nos.25958 to 25965 of 2017 (***Miot Hospital's case – cited supra***) filed by the present OP Hospital, seeking to

quash the criminal complaints filed against them in C.C. Nos.1008 of 2017, etc. before the Judicial Magistrate, Alandur, Chennai, which go in line with the relevant findings now reached by us:-

> " ***this Court is of the view that though unfortunate death have been occurred due to inundation which led to the power failure in the hospital.*** The allegation in the private complaint itself indicate that the hospital authorities have knowledge about the flood water entering into the premises and already the area had been inundated in the month of November 2015 itself. At that relevant time also the patients in the basement and lower elevation building were shifted to 6th floor and 8th floor respectively. ***They have clear knowledge that the generator room was placed in the basement area which is prone for inundation***. The other allegation clearly shows that they have not

> taken any safety measures immediately even after several warning given by the Government authorities in respect of excessive flood in the Adyar River. Therefore, whether such negligence or failure take reasonable care is amounts to high level of negligence or simple lack of care can be tested only after appreciation of evidence. Several allegations have been pressed into services against the hospital authorities for not taking safety measure and not acting promptly despite their knowledge etc.,"

Therefore, when the facts from different sources are appreciated collectively as highlighted above, it is quite apparent that there was a glaring failure on the part of the Hospital in foreseeing the danger despite clear information and warnings and in self-reading the weather atmosphere and, due to such negligent conduct, they remained indolent and fell short to show the anticipated preparedness expected of them as a distinguished medical care provider. The other

striking feature that stands against the defence of the OP is the collective death of the patients one by one, about 18 in number, most of whom died due to failure of life support and the said factum revealed from the statement and report of Dr. Nisheeth and Col.Dr.Trevor Nair completely destroys the contention of the OP that the death of the complainant's husband was only due to the critical illness and not due to any other reason. When the FIR-Ex.A3 as well as the Report under Ex.B25 clearly bring home the reality that although the patients were all critically ill, the contributing factor for the death of most of them is the failure of life support facilities, without which, they could not be managed clinically.

One more defence of the OP is that the cause of death assigned by them is substantiated through the post mortem certificate under Ex.A4 stating that the deceased would appear to have died due to effects of intracranial hemorrhage (pontine hemorrhage). But, in our view, the said Certificate need not be given any credence for a handful of reasons. Firstly, this is not a case of medical negligence

where the facts and points need elaborate discussion in a primary segment to examine the connection between the negligence on the part of the medical professional and the cause of death traceable thereto, whereas, in this case, it is the admitted fact that the patient was critically ill and the core issue is, whether treatment for the illness was rendered unproductive due to failure of life support system. Secondly, the finding of the Police Surgeon is only in the form of re-writing the illness initially diagnosed and recorded in the case sheet as the cause of death. Thirdly, the following findings of the Police Surgeon –

> *"On Dissection of Neck:-*
>
> *Neck Glands: Normal, Carotids : Nil Particulars*
>
> *Hyoid bone: Intact, Larynx and Tracheal Cartilages: Intact.*
>
> *Oesophagus Normal, Lumen – Patent",*

give a room to doubt its very authenticity. It is the admitted fact that the patient had undergone tracheostomy and, with the orifice or hole created after the recently performed

procedure, till he breathed his last, admittedly, the patient was in the need of Mechanical Ventilator. While so, when the patient had the visible orifice after the procedure on the front neck, slipping of the Police Surgeon to notice and note down the said important factum in his report raises a serious doubt about the authenticity of the report as a whole. Therefore, the OP cannot have any good defence by citing the Post Mortem Certificate as an anchor-sheet for their claim regarding the death of the deceased.

With ordinary diligence and exercise of a little more care and caution, beforehand shifting of the patients at the Medical ICU could have been done either to other hospitals or to the elevated floors or to the international block which is said to have had the full-fledged facilities even when the other parts of the Hospital lacked the same; but, that was not done which again shows that there was a negligence, which, in our view, although was not willful, had resulted in breach of duty to ensure continuous availability of life support to the patient/s, who was/were in dire need of the ventilator support which was alternated with a manual

ventilator support that did not work for him/them for continuation of the medical treatment. That being the reality revealed by records, in all prudence and fairness and with moral conscience, the Hospital could have at the earliest point of time itself, volunteered to offer compensation package to the families of the victims with an assurance that they would fortify the Disaster Management System to ensure that similar instance would not recur and such a spontaneous gesture on humanitarian basis would have certainly gained not only appreciation for them but abated the effects of negligence to a considerable extent, but, their undesirable conduct in justifying the negligent conduct on administrative side by hiding behind the performance of the medical professionals, indulging in suppression of material facts and particulars and presenting twisted facts would only run as aggravating factors against them for a greater liability under the consumer law. Accordingly, issue Nos.2 and 3 are answered against the OP and in favour of the complainant.

10. Coming to issue No.4, it is the case of the OP that, in respect of the deaths occurred upon flooding, the Madras High Court dealt with the same subject matter in a PIL filed as WP No.40385 of 2015 and passed orders, dated 31.03.2016, rejecting all the imaginary allegations made against them.

Secondly, FIR No.2444 of 2015 filed against the Hospital came to be referred as mistake of fact and the Police dropped further action by a Closure Report and the same was also filed before the jurisdictional Magistrate, but, it was neither rejected nor challenged; while so, with the same set of allegations as leveled in the present consumer complaint, the complainant has also preferred a private complaint under Section 190 (1) (a) read with Section 200 Cr.P.C. before Judicial Magistrate No.1, Alandur, in C.C. No.1013 of 2017, seeking to take cognizance under Section 304 A IPC. According to the OP, the complainant cannot fight two legal battles on the same cause of action and such an action would only amount to forum shopping and hence, on that score, she cannot maintain the present Complaint.

In this regard, learned counsel for the OP, after referring to a decision of the Apex Court in ***Martin F.D' Souza vs. Mohd. Ishfaq (AIR 2009 SC) 2049)***, wherein the Apex Court expressed its concern over enormous increase in frivolous complaints against Doctors after bringing the medical profession within the realm of the CP Act and the difficulty it causes for the medical professionals treating patients in situations of emergency, pressed into service another decision of the Apex Court rendered in ***Kusum Sharma & Ors. Vs. Batra Hospital and Medical Research Centre & Ors. (AIR 2010 SC 1050***) and placed heavy reliance upon the following text therein:-

> "While deciding whether the medical professional is guilty of medical negligence following well known principles must be kept in view:-
>
> III. The medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a

very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires. IV.

A medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field.

....

VII. Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession. VIII. It would not be conducive to the efficiency of the medical profession if no Doctor could administer medicine without a halter round his neck.

IX. It is our bounden duty and obligation of the civil society to

> ensure that the medical professionals are not unnecessary harassed or humiliated so that they can perform their professional duties without fear and apprehension.
>
> X. The medical practitioners at times also have to be saved from such a class of complainants who use criminal process as a tool for pressurizing the medical professionals/hospitals particularly private hospitals or clinics for extracting uncalled for compensation. Such malicious proceedings deserve to be discarded against the medical practitioners. XI. The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the patients have to be paramount for the medical professionals."

According to the learned counsel, the present instance is also a clear case of harassment against the OP that had

provided best treatment to the patient and unfortunately, the Hospital is now dragged between two complaints filed under different provisions of law before different forums and, by considering this aspect, this Consumer Complaint may be dismissed by holding it a vexatious litigation.

Although the learned counsel for the OP is relentless in making one submission after the other to somehow get the Hospital away from the liability for negligence, we are unable to endorse the same since the above points do not appeal to logic and rationale. The first limb of argument that the decision rendered by the Madras High Court in the PIL-WP No.40385 of 2015 rejected all the imaginary allegations made against the OP regarding the deaths occurred during the floods is highly misleading for the reason that the order passed therein clearly indicates that the scope of the writ petition was in respect of unauthorized construction alone and what was observed therein is that the interim prayer to direct the police authorities to initiate criminal action against the Hospital is quite different from the main petition and that an interim

prayer cannot go beyond the scope of the main petition. The said order only mentions that the supposed number of 75 deaths is said to be imaginary and it is relevant to quote below the relevant passage there from:-

> " 12. .... Five more persons died during the same period and those dead bodies were handed over to the respective relatives and thus, the allegation that 75 persons died is **stated to be** purely imaginary. **The investigation process is stated to be still on to find out if any criminal negligence tantamounting to culpable homicide is made out.** ...."

The above observation obviously does not go in line with the contention made on behalf of the OP and hence, there is no point of defence for them therein.

Similarly, the other segment of contention that the private complaint and the consumer complaint filed by the complainant with the same set of allegations under different provisions of law before two different forums amount to

multiplicity of proceedings as well as forum-shopping also does not go down with logic for the simple reason that the private complaint filed before the Magistrate Court is for taking cognizance of the offence and to punish the offenders under Section 304 A IPC, or in other words, it revolves around the issue of criminal negligence that shall have to be proved "beyond any reasonable doubt basis" whereas in a consumer complaint filed to award compensation for the death of the patient due to alleged negligence, apart from the legal position that the burden of proof lies on the Hospital against which administrative negligence is alleged, the same can be proved by preponderance of the evidence or by a balance of probabilities. While so, merely because the set of allegations are one and the same, when the relief sought for before each forum is different – one for penal action and the other for grant of compensation and further, the scope of adjudication & the nature of proceedings also being different in terms of the provisions governing the forums, no point of multiplicity of proceedings or forum shopping has arisen in this instance. Also, the case laws vehemently relied upon by

the OP's side in that regard are in no way helpful as they have relevance only to medical negligence and what we are now dealing with pertains to administrative negligence. Consequently, we answer this issue also against the OP and in favour of the complainant.

11. Coming to issue No.5 on the doctrine of res ipsa loquitur, it must be pointed out at the first instance that, with the said doctrine, negligence can be inferred in situations where there is no direct evidence of negligence or deficiency. Particularly in consumer proceedings which are, although summary in nature, akin to civil proceedings, as pointed out above by us, mere preponderance of probability is sufficient which means the other side is not necessarily entitled to the benefit of every reasonable doubt which is applicable to the criminal proceedings where proof beyond reasonable doubt is the rule. In other words, the doctrine of res ipsa loquitur is not applicable to criminal proceedings like the one launched by the complainant herein before the jurisdictional Magistrate, whereas, it is applicable as a rule

of evidence to the present proceedings and any other civil proceedings. For invoking this doctrine to infer negligence, the general requirements are –

- No.1, ***the character of the occurrence should be such that it would ordinarily not happen in the absence of negligence;*** *and*
- No.2, ***the instrumentality causing the occurrence was under the management and control of the party at the time the negligence, if any, probably occurred***.

In the present case, from the following facts and factors that,

a) ***the statement under Ex.A3 of none else than the Doctor attached to the Intensive Care Unit of the OP themselves – Dr. Nisheeth clearly conveys that the first damage caused by the flood in the form of complete inundation on 01.12.2015 was to the power rooms that provided power supply and power back-up to the life***

support which means, the power rooms were housed either at the basement or lower floor and the statement further conveys that the named patients in the FIR could not be continued on Mechanical Ventilator facility after complete power outage and, in the absence of such life-support, one by one they consequently succumbed since their condition could not be stabilized with any medical treatment in the absence of Mechanical Ventilator facility;

b) the circumstances prevalent after the onset of floods as presented under Ex.A25 Report by Dr.Trevor Nair not only corroborate the said statement of Dr. Nisheeth that the subsequent deaths were also due to loss of Mechanical and pharmacological life support at the lower floor levels but it is also inferable there-

from that there was no prior preparedness on the part of the Hospital to tackle the foreseeable calamity that was about to befall and the so-called action taken in the name of Disaster Management was not pre-emptive in nature to call it a disaster management rather it was only a regular rescue work.

c) on the face of the admitted fact that the Hospital was not far away from the Adyar River and even as per the own version of the OP Hospital that the only barrier between them and the River is a Chocolate Factory, either they ought not to have used the lower floors or the basement for running the ICU and housing the power rooms & panels which serve as the fulcrum for uninterrupted working of the life support equipments which would not function without power supply or at least,

by taking heed from the weather forecasts and by being alive to the visible weather conditions prevalent in the whole month of November, 2015, they ought to have taken at least temporary measures to shift the fragile patients on ventilator support to other hospitals or in their own Hospital at the International Block that is reported to have comprehensive facilities as per Ex.B25; and

d) when the burden of proof rests on the OP to prove otherwise that there was no breach of duty or administrative negligence, their deliberate conduct in lacking transparency and twisting the case as if no medical negligence is alleged and suppressing material details as to for what purpose they used the Basement Floor, whether the medical ICU and the Power Rooms were located at the

basement or lower floors, as to how many patients out of the 31 said to be on ventilator were from Medical ICU, as to whether the 18 patients who died due to loss of life support were all from Medical ICU, as to why transfer of patients that was done during the flooding was not undertaken as a diligent measure well before the striking of the calamity, etc. only indicates that the OP failed in discharging such burden and the said aspect highly militates against their fragile defence,

it is obvious that failure of both the power & back-up facilities and the life support system, which were under the management and control of the Hospital at the time of calamity, was due to the negligent ignorance of the hospital's administration to diligently foresee the disaster despite prior information and thereby, they failed in averting the loss of human lives and protecting the infrastructure. A case of

administrative negligence is thus clearly made out and there is no difficulty for this Commission to fix the liability upon the Hospital, however, even though the magnitude of such negligence is undoubtedly high, since we have already found that it is not a willful negligence, the compensation as claimed by the complainant as a whole cannot be awarded but it should only be proportionate by considering the other side of the fact that the patient was already battling for his life with serious illness and that the negligence was not a direct cause of his death but it was only contributory in nature and accordingly, we are inclined to award a sum of Rs.20,00,000/- which, in our opinion, would meet the ends of justice.

12. Regarding the direction sought to be issued for installation of proper Disaster Management Techniques at the OP which does not fall within our purview, although it is the contention of the OP that they have a functional Disaster Management Team and we have made certain observations above in that regard, needless to mention, it is already

incumbent upon the Hospital to have a dedicated and vibrant Disaster Management System compatible with the norms & requirements fixed by the Government regulating such system and, if they lack in that, undoubtedly, they shall have to face consequences for any surfacing failure, at the hands of the statutory authorities concerned.

13. In the result, by holding that the complainant has made out a case of administrative negligence on the part of the OP that served as a contributing factor for the death of her husband, we allow the Complaint in part, directing the OP to pay to the complainant a sum of Rs.20,00,000/- (Rupees Twenty Lakh only) as compensation besides costs of Rs.2,00,000/- (Rupees Two Lakh only), which shall be paid within a period of 6 (six) weeks from the date of receipt of a copy of this order, failing which, the said sum shall carry interest @ 9% p.a. from the date of the filing of the complaint till the date of realization.

-Sd-
R.SUBBIAH, J.
PRESIDENT.

LIST OF DOCUMENTS MARKED ON THE SIDE OF THE COMPLAINANT

Sl.No.	Date	Description of Documents
Ex.A1	02.12.2015	Copy of Death Certificate of the complainant's husband issued by MIOT Hospitals
Ex.A2	04.12.2015	Copy of Death Report issued by the Government Hospital, Royapettah
Ex.A3	04.12.2015	Copy of First Information Report filed by Dr. T.P. Nisheath of MIOT Hospitals
Ex.A4	06.12.2015	Copy of Postmortem Report issued by the Government Hospital, Royapettah
Ex.A5	11.01.2016	Copy of Death Certificate issued by the City Health Officer, Corporation of Chennai
Ex.A6	17.11.2015	Copy of Pharmacy Receipt issued by MIOT Hospital
Ex.A7	17.11.2015	Copy of Medical bill towards consultation
Ex.A8	--	Copy of visitors and attenders pass

LIST OF DOCUMENTS MARKED ON THE SIDE OF THE OPP. PARTIES

Sl.No.	Date	Description of Documents
Ex.B1	17.11.2015	Copy of Emergency Initial Assessment
Ex.B2	17.11.2015 to 02.12.2015	Copy of Medical case records of the patient

Ex.B3	17.11.2015	Copy of inpatient Initial Assessment
Ex.B4	17.11.2015	Copy of Admission of patient
Ex.B5	17.11.2015	Copy of Operation Anasthetics
Ex.B6	18.11.2015	Copy of Medical Management
Ex.B7	18.11.2015	Copy of Tracheostomy
Ex.B8	27.11.2015	Copy of Peritoneal Dialysis
Ex.B9	19.11.2015	Copy of Tracheostomy
Ex.B10	27.11.2015	Copy of Peritoneal Dialysis
Ex.B11	17.11.2015	Copy of HIV Test
Ex.B12	19.11.2015	Copy of Tracheostomy
Ex.B13	28.11.2015	Copy of Peritoneal Dialysis
Ex.B14	17.11.2015	Copy of Grave prognosis
Ex.B15	18.11.2015	Copy of Grave prognosis
Ex.B16	19.11.2015	Copy of Grave prognosis
Ex.B17	20.11.2015	Copy of Grave prognosis
Ex.B18	25.11.2015	Copy of Grave prognosis
Ex.B19	26.11.2015	Copy of Grave prognosis
Ex.B20	27.11.2015	Copy of Grave prognosis
Ex.B21	28.11.2015	Copy of Grave prognosis
Ex.B22	30.11.2015	Copy of Grave prognosis
Ex.B23	01.12.2015	Copy of Grave prognosis
Ex.B24	31.03.2015	Copy of Order of Hon'ble High Court in W.P. No.40385 of 2015
Ex.B25	02.12.2015 to 04.12.2015	Copy of Disaster of a Hospital's preparedness

-Sd-
R.SUBBIAH, J.
PRESIDENT.

ISM/TNSCDRC/Chennai/Orders/NOVEMBER/2023.