

(1971) 02 MAD CK 0010

In the Madras High Court

Case No : Writ Petition No's. 49, 62, 63 and 110 of 1971

S. Balasubramanian and Others

APPELLANT

Vs

Thiru M. Karunanidhi and Others

RESPONDENT

Date of Decision : 05-02-1971

Acts Referred:

Constitution of India, 1950 — Article 153, 154, 163(1), 166, 167

Citation : (1971) ILR (Mad) 437

Hon'ble Judges : K. Veeraswami, C.J.; Ramaprasada Rao, J.; Raghavan, J

Bench : Full Bench

Advocate : B. Kalyanasundaram, U.N.R. Rao and V. Subramanyan, for the Appellant; S. Govind Swaminathan, Advocate-General, S. Mohan, Government Pleader, Niren De, Attorney-General and Habibullah Badsha, for the Respondent

Final Decision : Dismissed

Judgement

K. Veeraswami, C.J.—These are petitions for qua warranto against Srimathi Indira Gandhi, the Prime Minister of India, Thiru M.

Karunanidhi, the Chief Minister of Tamil Nadu, and the members of his Council of Ministers. On the advice of the Prime Minister, the President,

acting under Article 80(2)(b) of the Constitution, dissolved the House of the People, with effect from 27th December 1970. He took the step in

view of her statement that she wished to seek a fresh mandate of the people to enable her Government to implement effectively the Socialistic and

secular programme and policies. In her broadcast the same day, she announced that fresh elections would be held in a couple of months, and that

until the new Government was formed, her Cabinet would continue to function. Likewise, acting on the advice of the Chief Minister, the Governor,

in exercise of his powers under Article 174(2)(b) dissolved the Legislative

Assembly of the State with effect from 4th January 1971. The Chief Minister's advice was made with a view to obtain a fresh mandate from the people to enable the State Government to implement more effectively the socialistic and secular programmes and policies. Since then, the Council of Ministers headed by the Chief Minister has been continuing to function as before until elections are held to the Assembly and a new Council is formed. The Petitioners maintain that, with the dissolution of the House of the People and the Legislative Assembly, the Prime Minister, and the Chief Minister, as well as the members of his Council of Ministers, ceased to have constitutional authority to hold and function in their respective offices. Before going into this question, we have first to dispose of a preliminary objection raised by the Respondents as to the maintainability of the petitions.

2. Though in her counter-affidavit, the Prime Minister raised the objection, like the Chief Minister in his counter-affidavit the learned Attorney-General, appearing for her, did not pursue it. But the learned Advocate-General of Tamil Nadu contended that the Petitioners had no personal or direct interest in the matter of continuance of the existing Council of Ministers, so as to enable them to invoke the provisions of Article 226 of the Constitution. He said that their personal rights were not in any way affected, and they were neither aggrieved in any way, nor Buffered any personal injury, and that, therefore, they were not entitled to question the validity of the continuance of the Ministry, by applying for writs of quo warranto. In our opinion, his objection should fail. The writ of quo warranto is of British origin. Originally, the writ was used by the King as of right, against encroachment of the Royal rights, franchises, or liberties. It was a civil writ at the suit of the Crown. The writ, however, fell into disuse, and led to the substitution of proceedings by way of information in the nature of quo warranto. In such proceedings, the practice of filing information by the Attorney-General came into vogue. Still later, the King's Coroner commenced the practice of exhibiting information of quo-warranto at the instance of private persons, and this power would appear to have been largely restrained by statute to prevent malicious proceedings by such persons. The King's Coroner, in view of the then statutory provisions, did not file information without the order of the Court. 9 Anne, c. 20 was

passed to render informations in the nature of quo warranto more speedy and effectual and for the more easy trial of the rights of offices and

franchise in corporations and boroughs. Chief Justice LORD READING, points out in *Rex v. Speyer*, *Rex v. Cassel* (1916) 1 K.B. 595 that

(page 609):

Since that time there has been a tendency to extend the remedy, subject to the discretion of the Court to grant or refuse information to private

prosecutors according to the facts and circumstances of the case.

It appears, that in *Darley v. The Queen* 12 C1 & F 537 the Judges were summoned to the House of Lords to give their opinion, which adopted

the opinion delivered by TINDAL C.J.,:

After the consideration of all the cases and dicta on this subject, the result appears to be, that this proceeding by information in the nature of quo

warranto will lie for usurping any office, whether created by charter alone, or by the Crown, with the consent of Parliament, provided the office be

of a public nature, and a substantive office, not merely the function or employment of a deputy or servant held at the will and pleasure of others.

Referring to this case and *Reg. v. Hampden* 6 B & S 931 LORD READING C.J., went on to observe:

The test to be applied is whether there has been usurpation of an office of a public nature and an office substantive in character, that is, an office

independent in title.... It establishes that, whereas formerly a quo warranto was held to lie only where there was an usurpation of a prerogative of

the Crown or of a right of franchise, a proceeding by information in the nature of quo warranto has long since been extended beyond that limit and

is a remedy available to private persons within the limits stated by Tindal C.J. and subject always to the discretion of the Court to refuse or grant it.

Information in the nature of a quo warranto is, therefore, a remedy available to private persons to test the title of the holder to his office of a public

nature, and of a substantive character, subject to the proceedings being bona-fide and well intentioned in public interest. Pointedly, the submission

that to maintain information, it was not necessary that the relator should have a personal interest in the matter, found acceptance in *Rex v. Speyer*,

Rex v. Cassel (1916) 1 K.B. 595. It appears to us, therefore, that if the application concerned public government, and there was no ground for

impugning the motives of the private relat, or he could clearly maintain it even though he had no personal interest in the matter. On such a view of

the matter, the preliminary objection raised in *Rex v. Speyer*, *Rex v. Cassel* (1916) 1 K.B. 595, was overruled by Lord Reading C.J., who, in so

doing, expressed himself thus (page 613):

Sir George Makgill appears to have brought this matter before the Court on purely public grounds without any private interest to serve, and it is to

the public advantage that the law should be declared by judicial authority. I think the Court ought to incline to the assistance, and not to the

hindrance, of the applicant in such a case if the Court has the power which I think it has. In my opinion, the preliminary objection fails on all

grounds.

This view of the legal position has been adopted by this Court in *Sivaramakrishnan v. Arumugha* ILR (1957) Mad. 158. There again, the

preliminary objection was based on the Petitioner not having a personal interest in the appointment sought to be quashed. The learned Judges in

rejecting the objection stated (page 160):

We are of the opinion that, though a writ of quo warranto is not a writ of right, in the sense that the Court, is bound to grant the relief prayed for,

still if the validity of an appointment or a claim to an office by a person is challenged by an applicant for a writ, and the Court is satisfied that the

petition has been filed bona fide, i.e., without improper motives and without delay, it has a right to investigate the matter and decide on the validity

of the appointment, notwithstanding that the Petitioner is not a rival applicant to that office, and in that sense does not have a personal interest in the

issue of a writ.

We are satisfied, therefore, that the petitions are maintainable.

3. We now proceed to consider the ground of the Petitioner against the Prime Minister. The Petitioner, Mr. U.N.R. Rao., an Advocate of this

Court, has appeared in person and contended that? the collective responsibility of the Council of Ministers to the House of the People, enjoined by

Article 75(3), is a mandatory requirement for the existence and functioning of the Council, admitting of no exception, and is a condition pre-

requisite for the coming into existence of a Council of Ministers, and that, just as one cannot conceive of the appointment of Council of Ministers

before the election or formation of the House of the People, equally inconceivable is the concept of Council of Ministers after dissolution of the House of the People. The Petitioner stresses that the collective responsibility in practice means that the Prime Minister and her Council of Ministers are continually, and for every ministerial act of theirs, answerable to the House of the People, that every action of the Council of Ministers can be discussed and voted upon. To test whether the Prime Minister and her cabinet command the majority of the House of the People, and that this cannot be done in the absence of the House of the People. He says that the very concept of a Prime Minister and Council of Ministers functioning in vacuum without the medium of the House of the People to test their authenticity is opposed to the provisions of the Constitution. Further, ours being a written Constitution, the words of the Constitution alone, according to him, can guide the governance of the country unfettered by the conventions and practices of countries from where the framers of our Constitution might have taken certain concepts. On the other hand, it is denied on behalf of the Prime Minister that the constitutional consequence of the President dissolving the House of the People is automatic dissolution of the Council of Ministers. The Attorney-General submits that the Constitution having adopted the Parliamentary form of Government as in Britain, the President in whom the executive power of the Union is vested, can exercise it only with the aid and advice of his Council of Ministers, that the obligation of the Council of Ministers to aid and advice the President, which is mandatory under Article 74(1), does not come to an end with the dissolution of the House of the People, and that, Article 75(3) embodies a principle of Parliamentary form of Government as in England, i.e., the Council of Ministers are not individually, but collectively responsible to the Legislature. The whole basis, the Attorney-General would say, of Articles 53(1), 74(1) and 75(1), (2), (3) and (5) and 85, is the model of the Parliamentary system, of Government as in Britain, and in order to substantiate his point, he has made extensive reference to the relative debates and speeches in the Constituent Assembly and also well known Constitutional writers on that system of Government. In answer, Mr. Rao would have none of them, but confine the Court only to the language of the Articles.

4. Part V of the Constitution is devoted to the Union set up. It has 5 Chapters which respectively deal with the Executive, Parliament, legislative, powers of the President, Union judiciary, and Comptroller and Auditor-General of India. Article 52 to 69 provide for the institution of the offices of the President and Vice-President, vesting in the President the executive power of the Union and for its exercise by him, their election by electoral colleges, administration of oath to them, terms and conditions of their office, including the procedure for impeachment of the President, and for removal of the Vice-President. Article 73 defines the extent of the executive power of the Union. While the executive power of the Union is vested in the President, it shall be exercised by him, either directly, or through officers subordinate to him, in accordance with the Constitution.

More specifically it is mentioned that the supreme command of the Defence Forces of the Union shall be vested in the President, and the exercise of the command shall be regulated by law. The President may hold office for a term of five years; but he is liable to removal by the Parliament on" impeachment. Though the Parliament for the Union shall consist of the President and the 2 Houses, viz., the Council of State, and the House of the People, the President himself shall not be a member of either House. The two Houses of the Parliament are elected, with this difference that, the House of the People is constituted by direct election, the Council of State is not subject to dissolution, but the House of the People, unless dissolved sooner shall continue for five years from the date appointed for its first meeting, and expiration of that period operates as a dissolution of the House. The President is entrusted with the power from time to time to summon each House of Parliament to meet at such time as he thinks fit, but with this qualification that six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in next session. The President may, from time to time, prorogue the Houses or either House and also dissolve the House of the People. He may address either House of Parliament, or both together, and for that purpose require the attendance of the members. He has also the right to send messages to either House of Parliament, with respect to a Bill pending in Parliament or otherwise, and the House is required to consider the message. At the commencement of the session of the House of the People, and at each session, and at the commencement of the first session of each year, he

addresses both the Houses of Parliament assembled together and informs Parliament of the causes of its summons. The Speaker of the House of

the People is elected by its members. He has to be a member of the House. He holds office, unless removed earlier, for the duration of the House

of the People, and shall not vacate his office and mediate before the first meeting of the House of the people after the dissolution. The Vice-

President of India who, unless sooner removed by the Council, holds office for a term of five years, is ex-officio Chairman of the Council of State.

In between the Presidential set up and of the Parliament would be, a Council of Ministers with the Prime Minister at the head, to aid and advise the

President in the exercise of his functions. The Prime Minister shall be appointed by the President, and the other Ministers shall be appointed by him

on the advice of the Prime Minister, and the Ministers shall hold office at the pleasure of the President. The Council of Ministers shall be

collectively responsible to the House of the People. A minister who is, for a period of six consecutive months not a member of either House of

Parliament, shall, at the expiration of that period, cease to be a Minister. All executive action of the Government of India shall be expressed to be

taken in the name of the President. The President is empowered to make rules for the more convenient transaction of the business of the

Government of India, and for the allocation among Ministers the business. The Prime Minister is enjoined to communicate to the President all

decisions of the Council of Ministers relating to the administration of the affairs of the Union, and proposals for legislation, to furnish to him affairs

of the Union, and proposals for legislation which the President may call for. If the President so requires, the Prime Minister is bound to submit for

the consideration of the Council of Ministers any matter on which a decision, has been taken by a Minister but which has not been considered by

the Council. A Money Bill shall not be introduced in the Council of State. There are special provisions in regard to annual financial statement. The

President shall in respect of every financial year cause to be laid before both the Houses of Parliament a statement of the estimated receipts and

expenditure of the Government of India for that year. The House of the People has a right, to grant, or refuse any Demand for expenditure, except

in respect of those items charged from the Consolidated Fund of India which are not submitted to the vote of Parliament When the House of the

People has made grants, Appropriation Bills are introduced for approval of the House of the People. When a Bill has been passed by the House of Parliament, it shall be presented to the President, who shall declare either that he assents to the Bill, or that he withholds assent therefrom. If when the Parliament is in recess, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances may appear to him to require. Such Ordinance shall be laid before both Houses of Parliament, and shall cease to operate at the expiration of six weeks from the re-assembly of Parliament, or earlier if before the expiration of the period, resolutions disapproving it are passed by both Houses. The President himself may also withdraw at any time, an Ordinance made by him. This is, broadly sneaking, the scheme of the set up of the Executive and the Legislature envisaged by the provisions of the Constitution and the system of the Executive tinder our Constitution so closely resembles the British System of Parliamentary Government.

5. In England, as a result of centuries of conflict between the Crown and the subjects and historical evolution of a form of Parliamentary Government} based mostly on conventions and traditions, the King in whom the executive power is nominally vested, is but a Constitutional Monarch in the sense that in the exercise of his executive power, he is aided and advised by his Council of Ministers, who are collectively responsible to the House of Commons The King or the Queen, cannot act himself or herself, and cannot exercise executive power unless aided and advised by the Council. Though in form the power is vested in the Crown, in substance, the real power is with the King's Council of Ministers. Though the members of the Council of Ministers, including the Prime Minister, come out of the House of Commons, the choice of the Prime Minister rests with the King, but the choice is controlled by conventions, and the Prime Minister is appointed by the King, who, on the advice of the Prime Minister, appoints the other Ministers. The leader of the majority party in the House of Commons, who can command not merely the confidence of his party, but also the majority of the members of the House of the Commons is the hallmarks of choice of the Prime Minister by the King. This is because of the principle that the Council of Ministers, including Prime Minister, are responsible to the House of Commons, the

members of which represent the electorate or the people. (6) That, by and large, the British Parliamentary System of Government, as we have just outlined, has been adopted in our Constitution is evident from the debates and some of the speeches of the prominent makers of the Constitution in the Constituent Assembly. We agree that these debates and speeches cannot be looked into by Courts in interpreting the written language of the Constitution. It was so held in *Murlidhar Chiranjilal Vs. Harishchandra Dwarkadas and Another*, . But we can find no valid objection to look into them not for the purpose of interpretation, but to understand the background of historical facts relating to the making of the Constitution, and to identify the broad character and nature of the Structure of the Government finally adopted by the Constitution. The permissibility of looking into such debates and speeches for such a purpose has been accepted by the majority of the Supreme Court in *I.C. Golak Nath and Others Vs. State of Punjab and Another*, . There Subba Rao C.J. observed (page 1657);

We have referred to the speeches of Pandit Jawaharlal Nehru and Dr. Ambedkar not with a view to interpret the provisions of Article 368, which we propose to do on its own terms, but only to notice the transcendental character given to the fundamental rights by two of the important architects of the Constitution. The debates and speeches in the Constituent Assembly to which our attention was drawn by the Attorney-General show that while the Constitution adopted the British form of Parliamentary Government, it was thought to be necessary only to incorporate into a few of the major conventions of that form of Government, namely, that the Head of the State is but a formal Head, the real power being in the Ministry, that he should act on the aid and advice of the Council of Ministers, and that the Council of Ministers is collectively responsible to the House of the People. We shall presently examine in detail, Articles 53(1), 74(1) and 75(1), (2) and (3), and the corresponding Articles in the State set up. At the moment we are on the broad aspects of the character and nature of the structure of the Union executive envisaged in the Constitution. Apart from the debates and speeches in the Constituent Assembly, the Supreme Court itself in *Ram Jawaya v. State of Punjab* A.I.R 1955 S.C. 549 stated that the structure of the executive under the Constitution is modelled on the British Parliamentary system. Speaking for the

Court, MUKHERJEA C.J., after observing that the Indian Constitution has not recognized the doctrine of separation of powers in its absolute rigidity, stated (page 556):

Our Constitution, though federal in its structure, is modelled on the British Parliamentary system where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law though the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State.

In India, as in England, the executive has to act subject to the control of the legislature; but in what way is this control exercised by the legislature?

Under Article 53(1) of our Constitution, the executive power of the Union is vested in the President but under Article 75 there is to be a Council of

Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. The President has thus been made a

formal or constitutional head of the executive and the real executive powers are vested in the Ministers or the Cabinet.

The same provisions obtain in regard to the Government of States; the Governor or the Rajpramukh, as the case may be, occupies the position of

the head of the executive in the State but it is virtually the Council of Ministers in each State that carries on the executive Government. In the Indian

Constitution, therefore, we have the same system of parliamentary executive as in England and the Council of Ministers consisting, as it does, of the

members of the legislature is, like the British Cabinet, "a hyphen which joins, a buckle which fastens the legislative part of the State to the executive part.

The same aspect is reiterated in T.M. Kannian Vs. Income Tax Officer, Pondicherry and Another, :

In the cabinet system of Government, the President acts on the advice of the Ministers who are responsible to Parliament.

Again, the Supreme Court pointed out in A. Sanjeevi Naidu, etc. Vs. State of Madras and Another,

Under our Constitution, the Governor is essentially a constitutional head, the administration of State is run by the Council of Ministers....

The cabinet is responsible to the legislature for every action taken in any of the ministries. That is the essence of joint responsibility.

7. Mr. Rao says that the moment the House of the People is dissolved, consistent with its collective responsibility to the House of the People under Article 75(3), the Council of Ministers automatically goes out. According to him, the responsibility of the Council to the House of the People is continuous, and a pre-requisite to its right to aid and advise the President in the exercise of his functions under Article 74(1), and the President's pleasure under Article 75(2) is conditioned and controlled by that pre-requisite. On the dissolution of the House of the People therefore, the President, as Mr. Rao would submit, is free and in fact bound to take up the reigns of the Government and rule in exercise of his powers under Article 53(1) until the new House of the People is elected, the Council of Ministers is formed in terms of Article 75(1). Mr. Rao, has stressed that, these several provisions of the Articles, including Article 78, should be read together and in the light of each other, and so done, the conclusion is inescapable, if the solemn pledge and resolve in the preamble to the Constitution to constitute India into a Sovereign Democratic Republic and to secure to all its Citizens, Justice, Liberty, Equality and Fraternity, has any real content or significance, that the Council of Ministers who have ceased to be members-of the House of the People, and ceased to be responsible to that House on account of the dissolution, cannot legally function, and that, during the interregnum created by the premature dissolution of the House, the only course open for the President is to himself take up the reigns of Government. Mr. Rao, adds that it is significant that, while provision has been made in respect of the Speakers and Governors that notwithstanding the expiry of the term of their offices, they should continue to hold them until their successors have been elected or appointed, as the case may be, no such provision is to be found in The Constitution for the continuance of the Council of Ministers after the dissolution of the House of the People, and that this is so because the Constitution contemplates anticipatory election before dissolution, so that there might be no interregnum, or vacuum of Council of Ministers. The argument undoubtedly raises issues of great Constitutional importance which do require careful consideration.

8. On a careful and anxious consideration of the argument of Mr. Rao, we are of opinion that, his proposition that on the dissolution of the House

of the People, the Council of Ministers goes automatically out of office, and that the President should himself take over the reins of Government

until the formation of a new House, and of a fresh Council of Ministers, cannot be accepted as correct, and has not the support of the relative

provisions in the Constitution. Articles 53(1), 74(1) and 75(1), (2) and (3) and 77(1) and (2) have enshrined but the fundamentals of the

Parliamentary system of Government as in Britain, which still remain as some of the major conventions in England of the Parliamentary system of

Government which have been developed over the centuries through political conflicts between the King and the people for transfer of the" real

power from the former to the latter. It is clear to us from a close examination of these Articles, apart from the authority of Rai Sahib Ram Jawaya

Kapur and Others Vs. The State of Punjab, T.M. Kannian Vs. Income Tax Officer, Pondicherry and Another, , A. Sanjeevi Naidu, etc. Vs.

State of Madras and Another, , that the President in whom the executive power of the Union has been vested, has to exercise it on the aid and

advice of the Council of Ministers with the Prime Minister at its head. No doubt, Article 53(1) says that, the executive power of the Union vested

in the President, shall be exercised by the President either directly or through officers subordinate to him. But it also says that, it shall be so

exercised by him in accordance with the Constitution. That means, the exercise of power by the President is controlled and limited by the other

provisions of the Constitution. He can exercise his power directly in accordance with the Constitution, that is, to say, in the cases and manner

indicated elsewhere in the Constitution. For instance, the appointment of Judges of the Supreme Court, and High Courts, is made directly by the

President under a warrant signed by him as provided in the Constitution, so too in the case of appointment of Governors. The President appoints

the Auditor-General of India by warrant under his hand and seal. These, and other cases, are instances of exercise by the President directly of the

executive power. But it should be noted that, as such exercise of power should be in accordance with the Constitution, he has to act in those cases

too on the aid and advice of the Council of Ministers. The position is the same when he exercises his power through officers subordinate to him.

The Council of Ministers are undoubtedly subordinate to him. But even so, Article 74 enjoins that there shall be a Council of Ministers with the

Prime Minister at the head to aid and advise the President in the exercise of his functions. What is one of the most important and major conventions

of Parliamentary system of Government in Britain is embodied in this provision. The effect of this provision is, to make the President a formal head

of the State, and to vest the real executive power in the Council of Ministers. This effect is achieved by vesting the executive power in the

President, and requiring him in the exercise of it to be aided and advised by the Council of Ministers. We are unable to accept the contention of the

Petitioners that there is no indication in Articles 53(1) read with 74(1) and 75, that the requisite of the President's exercising the power in that

manner is mandatory. The requisite is clearly expressed in Articles 53(1) and 74(1), and admits of no exception. Nowhere in the Constitution do

we find any provision enabling the President to act on his own, and by his individual judgment. That this is really the effect and intention of Articles

53(1), 74(1), 75(1), has been stated by the Supreme Court in *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, , in these words

(page 556):

The President has thus been made a formal or constitutional head of the executive and the real executive powers are vested in the Ministers or the

Cabinet.

This view has been unanimously held in the other decided cases, and our attention has not been invited to any authority to the contrary. In the

Constituent Assembly, while discussing as to whether the form of the President of the United States, or of the Constitutional Head of the United

Kingdom should be adopted as the basis in our Constitution, Dr. Ambedkar, Chairman of the Drafting Committee, made these remarks:

What the draft Constitution proposes in the Parliamentary System.... Under the Draft Constitution the President occupies the same position as the

King under the English Constitution. He is the head of the State but not of the executive. He represents the nation, but does not rule the nation. He

is the symbol of the nation. His place in the administration is that of a ceremonial device on a seal by which the nation's decision are made

known.... The President of the Indian Union will be generally bound by the advice of his Ministers. He can do nothing contrary to their advice nor

can he do anything without their advice.

Article 77 which provides for conduct of business of the Government of India, provides by Article 77(1) that all executive action of the

Government of India shall be expressed to be taken in the name of the President, and by Sub-article (2) orders and other instruments made and

executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President. This is the

ceremonial device evidently referred to by Dr. Ambedkar, by which the executive decisions are made known expressly in the name of the

President. The mechanism of aid and advice provided in Article 74(1) is, a mechanism or device by which the real exercise of power is vested in,

the Council of Ministers, and correspondingly the President is made but a constitutional head who can only exercise the power nominally vested in

him by Article 53(1) in accordance with the Constitution i.e., by the aid and advice of his Council of Ministers under Article 74(1). That virtually is

also the position of the Sovereign in England. Halsbury's Laws of England Volume VII (third edition) refers to this in paragraph 721 thus:

The personal functions of the Sovereign in the actual administration of the executive are not restricted principally to attaching her signature to

various executive documents the nature and general policy of which have been previously determined by individual Ministers or the Cabinet.

Nominally she may dismiss the ministry, dissolve or prorogue Parliament, or withhold her assent to bills, when she pleases, but in practice the

occasions upon which these prerogatives may be exercised in a constitutional manner are sufficiently clearly defined, since these powers form the

constitutional checks by which conformability in executive and legislative matters to the wishes of the House of Commons, and ultimately of the

electorate, is ensured. In the impartial exercise of these prerogatives, as also in her position as permanent head of the executive, in whom the

various threads of administration are centered, and as the representative of the national power and dignity, independent of and above the changes

and intrigues of party Government, the true significance and importance of the Sovereign as a Constitutional monarch are to be found.

In the same volume in paragraph 763, the position of the Sovereign and Cabinet has been described in these terms:

Since the reign of George I the Sovereign has ceased to attend meetings of the Cabinet, the place of the Sovereign being taken by the Prime

Minister Moreover, the presence of the Sovereign at any meetings of Ministers where deliberation discussions take place is now clearly recognized

as being contrary to constitutional practice. The decisions arrived at by the ministry must, however, be communicated to the Sovereign, in order to

afford her the opportunity of exercising that constitutional criticism with regard to all the department of State to which she is entitled. The full

information should also be given to her, both by the Cabinet and by individual Ministers, as to the measures proposed to be taken in important

matters; and drafts for the Sovereign's approval and signature, and the papers or despatches connected therewith should be submitted in time to

permit of her becoming fully acquainted with their nature before coming to a decision, the proper course being for all important documents and

correspondence to be sent first to the Prime Minister, to be transmitted by him to the Sovereign, and afterwards circulated amongst members of

the Cabinet.

As to the power of dismissal of Ministers, the position is thus, as mentioned in paragraph 768 of that volume in Halsbury's:

The Sovereign may legally dissolve the ministry at any time by dismissal; but the exercise of this power in order to assert the personal wishes of the

Sovereign in opposition to the wishes of Parliament, and ultimately of the electorate, is clearly recognized as unconstitutional. However, in cases

where the ministry still retains the confidence of the House of Commons, but the Crown has reason to believe that the latter no longer represents

the sense of the electorate, the dismissal of the Ministry, or the dissolution of Parliament, would be constitutional; and cases of emergency might

conceivably arise where through the unfitness or incapacity of the ministry the exercise of the power of dismissal would be constitutional, justifiable

and proper, in order to prevent the adoption of some course of action ruinous to the nation.

The President of India, therefore, being but a Constitutional head in whom the power is vested only nominally, can act only on the aid and advice

of his Council of Ministers, and the decisions of the Council of Ministers are expressed and made known in the name of the President. Articles

77(1) and (2) and 78, further bring out this aspect of the position of the President. The Constitution, therefore, does not contemplate anywhere an

occasion when the President will be on his own and could himself take over the reigns of the Government. In other words, at no time there can be

a vacuum, or interregnum in the existence of the Council of Ministers, which will bring to a standstill the carrying on of Government business.

9. Though the Prime Minister is appointed by the President, and the other Ministers are appointed by him on the advice of the Prime Minister, and

all of them hold their offices during the pleasure of the President, the responsibility of the Council of Minister is not to the President, but to the

House of the people. Under Article 75(3), the Council of Ministers is collectively responsible to that House That is the check placed on the

Council of Ministers in their conduct of aiding and advising the Presidents in the exercise of his functions. What does this collective responsibility to

the House mean Generally speaking, as Dicey in his Introduction to the study of the Law of the Constitution (Tenth edition) puts it, the

responsibility of the Minister means two utterly different things. He says (as page 325):

It means in ordinary parlance the responsibility of Ministers to Parliament, or, the liability of Ministers to lose their offices if they cannot retain the

confidence of the House of Commons.

This is a matter depending on the conventions of the constitution with which law has not direct concern.

The other meaning is the legal liability of every Minister for every act of the Crown in which he takes part. The monarch can do no wrong. The acts

of the monarch must always be done through a Minister. Orders given by the Crown must, when, expressed in writing, as they generally are be

countersigned by a Minister. The Royal Will can, speaking generally, be expressed only in one of three different way viz (1) by Order in Council;

(2) by order, commission, or warrant under the sign-manual; and (3) by proclamations, writs, patents, letters, or other documents under the Great

Seal. An Order in council is made by the Queen, by and with the advice Privy Council. The sign manual warrant, or other document to which the

sign manual is affixed, bears in general the counter-signature of one responsible Minister or of more than one. Sometimes it is authenticated by

some of the seals for the use of which a Secretary of State is responsible. There may be other persons on whom the responsibility is fixed for the

nominal act on the king. The Minister or servant of the Crown thus takes part in giving expression to the Royal Will is legally responsible for the act

in which he is concerned, and he cannot get rid of his liability by pleading that he acted in obedience to royal orders. Dicey goes on to observe (at

page 327):

The point, however, which should never be forgotten is this; it is now well established law that the Crown can act only through Ministers and

according to certain prescribed forms which absolutely require the co-operation of some Minister, such as a Secretary of State or the Lord

Chancellor, who thereby becomes not only morally but legally responsible for the legality of the act in which he takes part. Hence, indirectly but

surely, the action of every servant of the Crown, and therefore in effect of the Crown itself, is brought under the supremacy of the law of the land.

Behind parliamentary responsibility lies legal liability, and the act of Ministers no less than the acts of subordinate officials are made subject to the

rule of law

What Article 75(3) embodies is not the legal liability of the Council of Ministers but the political responsibility though this Responsibility is still a

matter of convention in the United Kingdom. Similar, responsibility is written into our Constitution, and that is in Article 75(3). Keith's

Constitutional, Law (seventh edition,), dealing with ministerial responsibility, (sic) bring out the substance of it. It is there observed (page 162):

Secondly, they (Ministry) are immediately responsible to Parliament, and ultimately to the electorate, for the general conduct of the executive and

the Advice given to the Crown also for the policy of the legislative measures initiated under Government auspices. This responsibility may be

enforced in the case of Parliament, either in theory by impeachment, or in practice by direct vote of censure or want of confidence, or by the defeat

of a vital Government measure in the House of Commons, either of which latter events is generally understood necessary to entail the resignation of

the Ministry and consequent loss of office, unless, on an appeal to the electorate at a general election consequent upon a dissolution, they are again

returned to power with a majority sufficient to enable them to carry the measure in question. It is in this sense that they are said to be ultimately

responsible to the electorate. It denotes an appeal from the verdict of the

Commons to the political sovereign the electorate, and in no wise concerns the crown.

Under Article 75(3), the Council of Ministers is responsible to the House of the People in respect of the aid and advice tendered by them to the resident in exercising his functions. This responsibility is tested by Parliament everyday when it is in session, by criticism, censure, and expression of no confidence. The responsibility, therefore, necessarily implies that in a Cabinet system of Government, the leader, of the Party having a majority in the Parliament or in the absence of it a leader who commands the confidence of majority of the members in the House is chosen by the President for appointment as Prime Minister, for, without such majority in the House, the Council of Ministers, including the Prime Minister can hardly give of effect to policies and programmes. Where a ministry is defeated in the House of Commons, it has become customary for it to appeal to the electorate rather than to resign at once, and it has also become an established convention that should a ministry decide to offer its resignation rather than to ask for a dissolution, its successors should take the earliest opportunity to appeal to the electorate. A defeat at a general election involves in normal circumstances immediate resignation. While thus the House of Commons may control the Ministry the Prime Minister in turn, may have a controlling power over the House itself, in that, in the event of his being of the view that either because he is not likely to have a majority in the House, or because even though he has a majority it does not any longer reflect the view of the electorate he may advise the Crown to dissolve the House of Commons. But the dissolution of Parliament in England does not in itself terminate the existence of the Ministry. This is what Keith, in his Constitutional Law (seventh edition) states (page 163):

The demise of the Crown does not affect the existence of the Ministry...nor does the dissolution of Parliament itself terminate the existence of the Ministry.

We do not see why the position should be different in the context of Article 75(3). It is inherent, in our opinion, in the nature of the ministerial responsibility to the House of the People that the Prime Minister had and should have the right to advise the President to dissolve the House of the People sooner than its usual and the President is entitled to act on the advice and

dissolve the House. He has the power to do so under Article 85(2)(b). Dissolution sooner than the usual period of five years is contemplated by Article 83(2). In the event of such dissolution for continued functioning of the Council of Ministers, until the formation of a new House and election of another Council of Ministers, there is a three-fold justification. The first is that the Council of Ministers which is immediately responsible to the House of the People, and has the confidence of the House, may like to test by dissolution, whether they still have the electorate with them in their policies and programmes, to whom they are ultimately responsible. Alternatively in case the Council of Ministers has lost the confidence of the majority of the House, they may instead of resigning immediately continue in power until a fresh verdict in their favour is obtained from the electorate. The second is, the necessity for the continuance of the Council of Ministers notwithstanding the dissolution of Parliament, because in view of Article 74(1), there cannot be any interregnum in the existence of a Council of Ministers on the aid and advice by which alone the President could discharge his functions. Thirdly, since the Council of Ministers hold their office during the pleasure of the President, which he can exercise in accordance with the provisions of the Constitution the Council continues until the President has withdrawn his pleasure. The collective aspect of the responsibility of the Ministry to the House is a different matter, which was in England, the result of experience of how the King could drive a wedge on the Council of Ministers when they could act on their individual responsibility. In the words of Lord Salisbury, collective responsibility means:

For all that passes in Cabinet each member of it who does not resign is absolutely and irretrievably responsible, and has no right afterwards to say that he agreed in one case to a compromise, while in another he was persuaded by his colleagues. It is only on the principle that absolute responsibility is undertaken by every member of the Cabinet who, after a decision is arrived at, remains a member of it, that the joint responsibility of Ministers to Parliament can be upheld, and one of the most essential principles of parliamentary responsibility established.

As Keith in his *British Cabinet System* (second edition) observes, it is essential to the modern Cabinet system that responsibility is fixed as

collective in that sense, and

Matters are discussed in cabinet and a decision taken. It then becomes binding on every member of the Cabinet and of course, on every minister

outside the Cabinet. He must vote for the Government's view if a vote is taken in Parliament; he must, if called upon, defend the decision, he must

not excuse himself on the score that he was outvoted. If he does not consent to take responsibility, he must resign.

That is what obtains in the Parliamentary practice of collective ministerial responsibility to the House of Commons. We are inclined to think that the

same principles have been applied to, and are embodied of Article 75(3) of our Constitution.

As to dissolution of Parliament sooner than its usual period, the right of the Prime Minister to ask for it seems to be established for long in England.

Wade and Phillips' Constitutional Law (fifth edition) observes (page 92):

Parliament endures for five years, unless it is sooner dissolved by the Sovereign. The Sovereign cannot exercise the prerogative of dissolution

without the advice of the Prime Minister; Ministers may be dismissed, though dismissal would only be justified under modern conditions by wholly

abnormal circumstances. It has for some time been a convention of the constitution that the Sovereign will dissolve Parliament at the request of the

Prime Minister. The right to request a dissolution is a powerful weapon in the hands of a Prime Minister, who may use it to threaten recalcitrant

supporters with the expenses of an election, and to compel the House of Lords to give way to the House of Commons, unless they are prepared to

face the unfavourable result of an appeal to the country. A Prime Minister, whose Government is defeated in the House of Commons on a major

issue, is expected either to resign, or to request a dissolution. Whether the convention as to the right to a dissolution would survive the presence of

three parties, each with a fair proportion of seats, it is difficult to determine. It may be that the Sovereign would refuse, should the occasion arise,

to grant a dissolution at the request of a Prime Minister who had never had a clear majority in the House of Commons. But what happened in 1924

is a precedent" to the contrary; King George V. granted a dissolution to the Labour Prime Minister who had taken office without a majority, but

with the support of the Liberals who subsequently withdrew that support.

Another situation, more probable under existing conditions, might raise the question of the right of a Prime Minister to request a dissolution. If, after a general election, particularly one which followed a dissolution granted at his own request, a Prime Minister found himself with a very small majority in the new House of Commons, as actually happened in 1950, it may be that the Sovereign ought to satisfy himself that no alternative Ministry could be formed before granting a second dissolution. In practice no doubt the Prime Minister would himself so advise.

So far as our country is concerned, any convention as to the request for a second dissolution at the instance of the same Prime Minister, is a matter

for the future. But when the request is made for the first time, or the second time, by the Prime Minister for dissolution of the House of the People

and it is granted, the Prime Minister, and his or her Council of Ministers are entitled to, and in fact, bound to continue in office, until a new House is

formed and the new Council of Ministers is constituted by the President. We have already given reasons why it should be so. As observed by Sir

Ivor Jennings in his book on Cabinet Government (third edition),

It is essential to the parliamentary system, that a Cabinet should be formed, and the Cabinet must remain until its successors have been appointed.

This principle has also been re-stated by Keith in his British Cabinet System (second edition). He says:

It demands that, if the Commons withdraws its support, the Cabinet must either resign, or appeal to the electorate for a new mandate. If that is not

accorded, the ministry must resign, if the election has given a clear majority to the opposing party; but, if there are more opposing parties than one,

and the result is not clear, it may meet Parliament and allow a vote to decide its fate, as the Conservative ministry did in January, 1924. But it

cannot ask another dissolution, nor should the Crown concede it if it were asked.

Similarly, Sir Ivor Jennings, in his British Constitution (fifth edition) says (page 82):

The Government has in its hands (or strictly, the Prime Minister has) the power of dissolving Parliament, If it is defeated it may prefer to "appeal to

the people" and not to "bow to the will of the House....

This does not mean that the Government pays no attention to what is said in the House. It exists not because of the intelligence of its members or

the excellence of its intentions, but because it won a majority at the last election. It will continue to exist only if it secures a majority at the next election.

The continuance of the Ministry in power depends on its ability to secure majority in the new House. Thus dissolution of the House and going back to the electorate for a fresh mandate, appears to be inherent in the democratic content of the ministerial responsibility to the House.

Dissolution appears but to provide a direct link between the ministerial responsibility and the people, whose mandate the Prime Minister, by

dissolution of the House, seeks at a time most favourable to him, irrespective of - whether the Council of Ministers commands a majority in the

House of the People. Having regard to the fact that the House is constituted normally for a period of five years, it is possible that its members

owing to efflux of time, no longer reflect the changing views of the people, or the electorate which they represent, or the views of the members

themselves may have undergone changes, and it may become desirable for the Council of Ministers to test whether they have still the sanction of

the electorate.

10. It was passionately appealed to us, for the Petitioners that the members of the Council of Ministers having, as a result of the dissolution, ceased

to be members of the House, and have also ceased to be responsible to the House as it does not exist, it will be undemocratic to allow them to

continue in office until a new House is elected. But the argument overlooks that the answerability to the House is substituted by the answerability by

the Council of Ministers, to the electorate at large. It is not as if the Council of Ministers which continues after dissolution has ceased to be

responsible to the people whom the House represents when it exists. What happens during prorogation of the House of the People?

No one will say that because the House of the People is not in session, the Council of Ministers has ceased to be responsible to it. The Council of

Ministers will have to account for its acts in aiding and advising the President to the House of the People when it re-assembles. Likewise, a Council

of Ministers which continues, and has to continue, for the reasons we have mentioned, is still responsible after dissolution to the people whom they

approach for fresh verdict of confidence in them in relation to their policies and

programmes. If the Council of Ministers acts in an irresponsible way, the electorate will give its verdict against it. Further, the Ministry need not go out of office merely because the members of the Council of Ministers have ceased to be members of the House of the People. This is clear from Article 75(5), in view of which a person who is not a member of the House, can be a Minister for a period upto six months.

11. On the whole, therefore, we are of the view that it has not been shown that the Prime Minister, after the dissolution of the House of the People, has no right to continue in office until the election of a new House, and the formation of a Ministry.

12. In the case of the Chief Minister and the other members of the Council of Ministers of Tamil Nadu, the position is not different. Articles 153,

154, 163(1), 166 and 167, correspond to Articles respectively 52, 53(1), 74(1) 75, 77 and 78. The fact that the Governor is, in a very few cases,

required to exercise his functions, or any of them in his discretion does; not, and cannot, affect the legal position as to the right of the Chief Minister

and other Ministers to continue in office after dissolution of the Assembly until election of the new Assembly and formation of a Ministry. Mr.

Kalyanasundaram, for the Petitioners, who questioned the right to continue, did not go so far as Mr. Rao, to contend that the parallel of the British

Parliamentary system of Government should not be looked into. On the other hand, his argument proceeded on the basis that, what has been

provided for by Chapter II of Part VI of the Constitution is the Parliamentary form of Government as in Britain. But he said that since the choice of

the Chief Minister by the Governor depended upon his ability to secure majority support in the Assembly, so too his continuance in office should

depend on the continued support of the majority in the Legislature, but when the Assembly is dissolved, the basis for his continuance disappears. It

is not necessary to reiterate that the continuance of the Ministry once formed on the support of the majority, continues notwithstanding the

dissolution because the Governor who is but the constitutional head of the State, can function only with the aid and advice of his Ministers, and

because the Chief Minister, as well as the other Ministers are appointed by the Governor, and they hold office during his pleasure. Further, as in

the case of the Prime Minister, so too the Chief Minister, who undoubtedly

commanded a majority in the Legislative Assembly, had the right to ask for dissolution of the Assembly in order to get a fresh mandate for the policies and programmes of his party, until he gets a verdict from the electorate, he could continue in his office, along with the other members of the Council of Ministers.

Mr. Kalyanasundaram also said that, while certain other Constitutions provided for the continuance of the Ministry in the contingency of dissolution

our Constitution has made no such provision. That is true, but it makes no difference to our view of the relative Articles, in the light of which it is

legal for the Council of Ministers, including the Chief Minister, to continue in office after dissolution, and until a new House is elected and a ministry

formed. In the course of arguments our attention was invited for the Petitioners, to *Adegbenro v. Akintola* (sic). That case related to the power of

the Governor to remove the Prime Minister, and for that purpose it was held that support to the new Prime Minister need not necessarily be tested

only from the floor of the House. The Nigerian Constitution contained a proviso to Section 33(10). It said that the Governor should not remove the

premier from office unless it appeared to him that the Premier no longer commands the support of the majority of the members of the House of

Assembly. The case turned on the meaning of the words the Premier no longer commands the support of a majority of the members. The Premier

in that case was removed by Governor or after receipt of a letter from a majority of the House of the Assembly for Western Nigeria, Stating that

they no longer supported the Premier. A British precedent was sought in aid of a contention that the removal was illegal. The Privy Council

rejected it. In so doing, VISCO CJNT RADCLIFFE, observed (page 548):

It has been said, and said truly, that the phrase is derived from the constitutional understandings that support the unwritten, or rather partly written,

constitution of the United Kingdom. It recognises the basic assumption of that constitution, as it has been developed, that, so long as the elected

House of representatives is in being, a majority of its members who are prepared to act together with some cohesion is entitled to determine the

effective leadership of the Government of the day. It recognises also one other principle that has come to be accepted in the United Kingdom: that,

subject to questions as to the right of dissolution and appeal to the electorate, a

Prime Minister ought not to remain in office as such once it has been established that he has ceased to command the support of a majority of the House. But, when that is said, the practical application of these principles to a given situation, if it arose in the United Kingdom, would depend less on any simple statement of principle than on the actual facts of that situation and the good sense and political sensitivity of the main actors called on to take part.

...Discussion of constitutional doctrine bearing on a Prime Minister's loss of support in the House of Commons concentrates therefore on a Prime Minister's duty to ask for liberty to resign or for a dissolution, rather than on the Sovereign's right of removal, an exercise of which is not treated as being within the scope of practical politics. In this state of affairs it is vain to look to British precedent for guidance on the circumstances in which or the evidential material on which a Prime Minister can be dismissed, where dismissal is an actual possibility: and the right of removal which is explicitly recognized in the Nigerian constitutions must be interpreted according to the wording of its own limitations and not to limitations which that wording does not import.

The Supreme Court of Nigeria held that the support for the Premier for the purpose of the proviso to Section 33(9) of the Nigerian Constitution could be found only in the form of a resolution on the floor of the Assembly. The Privy Council did not accept this view, and stated that it did not find the scheme or provisions of the Constitution of Western Nigeria to enable a Court of law to restrict the Governor's power of removal in the way imposed by the Supreme Court's answer to the question. We do not think that this case really helps us to decide the issue in the petitions before us.

13. The petitions are dismissed with costs in each.