

1. This is yet another Public Interest Litigation with the State and Sri Pinarayi Vijayan, the Chief Minister of Kerala, impleaded as respondents 1 and 2. The main relief sought reads as under:

"i) Issue a writ of quo-warranto declaring that by the conduct of a Minister in the Council of Ministers approaching this court challenging an action of a Subordinate Administrative Authority had resulted in forfeiting the concept of collective responsibility and thereafter through the abstention of four Ministers from the meeting of the Council of Ministers on 15.11.2017 after giving in writing intimating their decision as decided by the political party, which has further resulted in forfeiting the concept of collective responsibility by disintitling the 2nd respondent from holding the office of Chief Minister as the 2nd respondent had lost his constitutional status to continue in office and that he is an usurper of power through the said event".

2. The prayer for writ of quo warranto is sought on two grounds: First, Sri Thomas Chandy, who was a Minister in the Cabinet WPC.37284/17 headed by the second respondent-Chief Minister, had filed W.P (C).36047/17 before this Court, inter alia challenging a report submitted by the District Collector, Alleppey. The said writ petition was dismissed by a Division Bench of this Court by Ext.P1 judgment. Petitioner states that the moment the judgment was rendered, the Council of Ministers lost its constitutional authority to continue in office in the light of the declaration of law that there was cessation of collective responsibility as mandated in [Article 164\(2\)](#) of the Constitution of India. And, according to the petitioner:

"the moment when the judgment is rendered, the Council of Ministers which assumed office after administering the oath as provided in the Schedule 3 of the Constitution of India had lost its constitutional authority to continue in office in the light of the declaration of law by this Court declaring cessation of collective responsibility, for the Government in office".

3. Second, on the day next to Ext.P1 judgment, the Chief Minister convened a meeting of the Council of Ministers, but four Ministers who are the nominees of Communist Party of India, a coalition partner of the ruling front, had abstained WPC.37284/17 from the Cabinet meeting. It is stated that one among them, who is also the leader of the parliamentary party of the Communist Party of India, openly declared their abstention and wrote to the Chief Minister that they would not participate in the Cabinet meeting so long as Sri Thomas Chandy continued to be a Minister in the Cabinet. This, according to the petitioner:

"will constitute declaration of no confidence on the 2nd respondent as the leader of the cabinet and thereby further exhibiting the absence of collective responsibility for the continuance of the cabinet under the leadership of the 2nd respondent. As such, looking at the constitutional perspective, the 2nd respondent is an usurper of power and has no authority to continue in office and therefore, this court is under a constitutional obligation to issue a writ of quowarranto calling upon the 2nd respondent under what authority the 2nd respondent is continuing as the Chief Minister of the State after Ext.P1 judgment and after the incident on 15.11.2017, by which four Ministers have abstained from the meeting of the cabinet with notice in writing."

4. We heard the counsel for the petitioner Sri George Poonthottam and the learned Advocate General Sri.C.P.Sudhakar Prasad.

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5. To begin with, [Article 164\(2\)](#) of the Constitution of India provides that the Council of Ministers shall be collectively responsible to the Legislative Assembly of the State. Similar is [Article 75\(3\)](#), which provides that the Council of Ministers shall be collectively responsible to the House of the People.

6. At the outset, we may pose unto ourselves a question, What is Cabinet? In theory, the cabinet is the policy-making body which is collectively responsible to Parliament and co-ordinates the work of government departments and in a democratic set up, it is a constitutional mechanism to ensure that before important decisions are reached, all the facets of an issue are weighed and considered. The cabinet is a creature of convention and has no legal powers, observes John Alder in his Principles of Constitutional and Administrative Law (3rd Edition, McMillan, p.313). Tracing its history, Alder writes that the cabinet originated in the seventeenth century as a group of privy councillors called together to give confidential advice to the monarch. The term 'cabinet', according to him, was originally one of abuse and referred to the King's 'closet' or anteroom. George I (1714-27) leaned particularly heavily on WPC.37284/17 party leaders, and from his reign on the monarch ceased to attend cabinet meetings. During the reign of George III (1760- 1820) the convention emerged that the monarch should generally consult the cabinet. Eighteenth-century cabinets served the dual purpose of ensuring that the executive could command the support of the Commons and as a means of presenting the monarch with a united front, and from a mid- nineteenth-century perspective, Bagehot regarded the cabinet as the pivot of the constitution and its driving force.

7. Sir Ivor Jennings, in his *Cabinet Government* (Third Edition) stated that the Cabinet is the supreme directing authority. It integrates what would otherwise be a heterogeneous collection of authorities exercising a vast variety of functions. Neither the Cabinet nor the Prime Minister, as such, claims to exercise any powers conferred by law. They take the decision, but the acts which have legal effect are taken by others: the Privy Council, a Minister, a statutory commission and the like. . . The ministers are fully accountable to Parliament for any act of policy or administration within their departmental jurisdiction. It does not follow that the coordinating ministers WPC.37284/17 are non-responsible. Having no statutory powers as coordinating ministers, they perform in that capacity no formal acts. But they share in the collective responsibility of the Government as a whole; and as Ministers, they are accountable to Parliament. The learned author at page 233 has stated that the Cabinet is a general controlling body. It neither desires, nor is able, to deal with all the numerous details of the Government. It expects a minister to take all decisions which are not of real political importance. Every Minister must, therefore, exercise his own discretion as to what matters arising in his department ought to receive cabinet sanction.

8. John Alder (supra p.319-20) observes that collective responsibility applies to the cabinet and probably to all government ministers. It was developed originally so that government and Parliament could put up a solid front against the king. It suggests a misleading picture of collegial government and has three aspects:

(i) Solidarity. All ministers must be loyal to the policies of the government, whether or not they are personally concerned with them.

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(ii) It requires the government as a whole to resign if defeated on a vote of confidence in the House of Commons or if the Prime Minister resigns.

(iii) It requires that cabinet and government business be confidential.

8. Collective responsibility is often said to be important for the Hobbesian purpose of ensuring that the government speaks with a single voice even though there may be no single solutions. Ministers can discuss policy differences in private, confident that all will support the decision which is eventually reached. The presentation of a single view adds authority to the government's position because it disguises the coalition nature of many governments.

9. The principle of collective responsibility is deeply rooted in the British Cabinet's collegiate ethos, writes Simon James in his book *British Cabinet Government* (2nd Ed. Pp.6-7). It holds that all ministers are equally and jointly responsible for every decision taken by the

government. In private within the government they may disagree and argue about the policy, but once a decision is taken they must support and defend it in public. The minister who cannot bring himself to stifle his WPC.37284/17 disagreement in public must resign. This applies to decisions taken in Cabinet, by smaller gatherings of ministers such as Cabinet committees, or by individual ministers, and every minister shares responsibility for every decision whether he was involved in taking it or not. It is an illogical, even distasteful doctrine, but there is no practical alternative to it. Collective responsibility is an organised hypocrisy, but a necessary one.

10. Under the Cabinet System of governance, there are two facets of responsibility: Ministerial Responsibility and Collective Responsibility. All Ministers are collectively responsible for the Government's policy and must share in formulating it. The system of Cabinet Government, therefore, is the instrument by which practical effect is given to this principle of collective responsibility of Ministers who are separately responsible to parliament for the administration of their own Departments (Patrick Weller's Cabinet Government in Australia, Ed. 2007, P.96).

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11. The concept of collective responsibility is essentially a political concept and has two meanings which are legitimately ascribed to it. First, while formulating the policies, although the members of a Government may have expressed different views in the meeting of the Cabinet, yet all of them are unanimous in supporting the Government's policies; they invariably exhibit unanimity on all issues in public. Second, the Ministers with an opportunity to speak for or against the policies in the Cabinet ought to bear moral, political, and personal responsibility, yet collectively, lest the governance is the casualty. In other words, all that collective responsibility means today is that every member of the Government must be prepared to support all Cabinet decisions, both inside and outside the House. If the Minister is unable to reconcile himself or herself with any cabinet decision and decides to speak out, the only option is to resign from the Cabinet.

12. There may be differences on tactics; men who agree on the merits in abstracto of a line of action may honestly disagree on the party wisdom of presenting this as their policy to the electorate. The Cabinet normally, it is clear, arrives at WPC.37284/17 unanimity much as does a village panchayat in India. Views are discussed, differences smoothed out, and a compromise result achieved, which all can accept without dishonour. Where it is impossible thus to agree, voting may take place, although, by tradition, the taking of votes is exceptional. Lord Granville argued: 'that it was absurd to count heads in assemblies in which there was such a difference in the contents of the heads', and Lord Oxford and Asquith stated:

'It is not, or was not in any other Cabinets, in which I have sat, the custom (unless in exceptional cases not always of the first importance) to take a division'.

13. But what cannot be lost sight of is that the principle of collective responsibility does not apply to a minister's responsibility for his personal mistakes or political blunders. Such a case may lead only to his resignation as the Minister, and his action does not dislodge the government itself.

14. Though the collective responsibility of the Cabinet is understood as above, on the Cabinet Minister's responsibility, it means that the Parliament or the State Legislature may WPC.37284/17 demand an explanation from the Minister concerned, and if that explanation is unsatisfactory and the responsibility is collective, the Parliament or the Legislature will vote against the Government. It can thus compel a minister's resignation or the House's dissolution, as the case may be. Here again, if the responsibility is not collective, but if the Cabinet falters due to a Minister's negligence or error of judgment, and if the House disapproves it, the Minister will resign from the Cabinet. Sir Ivor Jennings in "Cabinet Government (Third Edition) had dealt with such a situation thus:

"The truth is that the doctrine is a pure fiction. When it is said that a minister is responsible to Parliament, it is meant that the House of Commons has a right to demand an explanation. If that explanation is not considered satisfactory and the responsibility is collective, the House will vote against the Government and so compel a resignation or a dissolution. In fact, however, as will be explained more fully in a later chapter, such an event rarely happens. If the responsibility is not collective, but the act or advice was due to the negligence of or to an error of judgment by a minister, and the House disapproves, the minister will resign."

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15. These principles have been laid down by the Apex Court on different occasions, and we shall refer to some of the judgments. In one instance, the Governor of a State terminated the services of a Subordinate Judge who was on probation. The question, then, was whether the Governor could exercise powers and functions of appointment and removal of members of Subordinate Judicial Service. In [Samsheer Singh v. State of Punjab](#) [AIR 1974 SC 2192], the Supreme Court has drawn parallels between the Westminster-form of Government and the Indian Parliamentary-form of Government. It has, in that context, referred to the fundamental principle of English constitutional law that Ministers must accept responsibility for every executive act. It was held that in England the sovereign never acts on his own responsibility and that the power of the sovereign is conditioned by the practical rule that the Crown must find advisers who have the confidence of the House of Commons to bear the responsibility

for his action. This rule of English constitutional law is incorporated in our Constitution, which envisages a parliamentary and responsible form of Government at the Centre and in the States and not a Presidential form of Government.

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16. In another instance, a commission of enquiry was set up by the Central Government against the Chief Minister and other Ministers of a State. It was to investigate charges of corruption, nepotism, and misuse of power. The State itself filed a suit under [Article 131](#) of the Constitution to have the enquiry commission invalidated. The maintainability of the suit fell for consideration. A Seven-Judge Bench of the Supreme Court in [State of Karnataka v. Union of India](#) [AIR 1978 SC 68] has held that the suit was maintainable. The court held that a close relationship between the State per se and the State Government exists. Any action affecting the State Government or its ministers in their capacity as ministers would be a matter in which State was concerned; in other words, the claims of the State Government are the claims of the State. In elucidating the federal polity of our nation and also the canons of cabinet collective responsibility, in para 44 of the judgment, it was held that [Art.163](#) speaks of the Council of Ministers "with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of WPC.37284/17 them in his discretion" and that though the Council of Ministers, theoretically, were appointed by the Governor, it is certainly "collectively responsible to the Legislative Assembly of the State".

17. The Larger Bench has specifically dealt with the object of collective responsibility. In para 45 of the judgment, it has observed:

"45. The object of collective responsibility is to make the whole body of persons holding Ministerial office collectively, or, if one may so put it, "vicariously" responsible for such acts of the others as are referable to their collective volition so that, even if an individual may not be personally responsible for it, yet, he will be deemed to share the responsibility with those who may have actually committed some wrong. . . Explaining "collective responsibility", as understood in England, two writers on Constitutional matters (see: "Some Problems of the Constitution" by Geoffrey Marshall and Graeme C. Moodie) say: (at p. 71): "If responsibility is taken in the formal constitutional sense, there would seem, granted collective governmental responsibility, to be no clear distinction to be drawn between Ministers inside and those outside the Cabinet. To be responsible in this sense simply is to share the consequences of responsibility -

namely to be subject to the rule that no member of the Government may properly remain a member and dissociate himself from its policies (except on WPC.37284/17 occasions when the Government permits a free vote in the house)".

They add:

"The substance of the Government's collective responsibility could be defined as its duty to submit its policy to and defend its policy before the House of Commons, and to resign if defeated on an issue of confidence".

18. The Apex Court has gone on to observe that each Minister can be made separately responsible for his own decisions and acts and omissions also and that the Council of Ministers can stay in office only so long as it commands the support and confidence of a majority of members of the Legislature of the State. So the whole Council of Ministers must be held politically responsible for the decisions and policies of each of the Ministers and of his department, which could be presumed to have the support of the whole Ministry. In other words, at least on issues involving matters of policy, the whole ministry will have to be treated as one entity so far as its answerability to the Legislative Assembly is concerned. Responsibility to Parliament, according to the Hon'ble Supreme Court, only WPC.37284/17 means that the Minister may be compelled by convention to resign and that out of this liability arose the principle of collective responsibility. It has quoted with approval from Wade and Philips' on "Constitutional Law" (8th Edn., p. 87):

"Just as it became recognised that a single Minister could not retain office against the will of Parliament, so later it became clear that all Ministers must stand or fail together in Parliament, if the Government was to be carried on as a unity rather than by a number of advisers of the Sovereign acting separately".

19. It has also referred to Lord Salisbury's views as expressed in 1878 that:

"For all that passes in Cabinet, every 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 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."

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20. On the Cabinet Minister's responsibility, Sir Ivor Jennings in *Cabinet Government* (Third Edition) observed at page 449, that when it is said that a Minister is responsible to Parliament, it is meant that the House of Commons (in our Constitution Lok Sabha) is empowered to demand an explanation. If that explanation is not considered satisfactory and the responsibility is collective, the House will vote against the Government, and so compel a resignation or a dissolution. If the responsibility is not collective, but the act or advice was due to the negligence of or to an error of judgment by a Minister and the House disapproves, the Minister will resign. In his *the British Cabinet* (supra), John P. Machintosh observes that if there is dissension between Ministers, matters may be thrashed out in private and the contestants plead in turn with the Prime Minister. But it is in the Cabinet that the conflict must be formally solved, the minority either accepting the decision and assuming joint responsibility or, if they cannot tolerate it, tender their resignations.

21. By operation of [Art. 75\(3\)](#) and oath of office and of secrecy taken, the individual Minister and the Council of Ministers WPC.37284/17 with the Prime Minister as its head, as executive head of the State as a unit, body or committee are individually and collectively responsible for their decisions or acts or policies and they should work in unison and harmony. Continuing in the same vein, the Supreme Court in [R. K. Jain v. Union of India](#) [(1993) 4 SCC 119] observed that political promises or aims as per manifesto of the political party are necessarily broad; in their particular applications, when voted to power, may be the subject of disagreement among the members of the Cabinet. Each member of the Cabinet has personal responsibility to his conscience and also responsibility to the Government. Discussion and persuasion may diminish disagreement, reach unanimity, or leave it unaltered and that despite persistence of disagreement, it is a decision, though some members like less than others. Both practical politics and good Government require that those who like it less must still publicly support it. If such support is too great a strain on a Minister's conscience or incompatible to his/her perceptions of commitment and find it difficult to support the decision, it would be open to him/her to resign. Therefore, the price of acceptance of Cabinet office is the assumption of the WPC.37284/17 responsibility to support Cabinet decisions and the burden of that responsibility is shared by all.

22. 'What is tantamount to government decision' was examined in [Gulabrao Keshavrao Patil v. State of Gujarat](#) [(1996) 2 SCC 26] and the Apex Court held that action of Government is conclusive only when provisions of Constitution and Business Rules under [Article 166 \(3\)](#) are complied with. Before action or decision is expressed in name of Governor in the manner prescribed under those Rules and communicated to the party concerned, the Government could always re-consider its decision. In that context, the Court has observed in para 14 of the judgment that the responsibility of Council of Ministers under [Art.164\(2\)](#) of the Constitution embodies the political responsibility of the Ministry headed by the Chief

Minister. As stated above, collective responsibility makes each Minister responsible to the Legislature for the acts of himself and other members of the Council of Ministers. Since the Council of Ministers would stay in office as long as it commands the majority of the Legislative Assembly, it is politically WPC.37284/17 responsible as one entity and in case it loses its confidence the Ministry as a whole is required to resign.

23. In *Common Cause, A Registered Society v. Union of India* [(1999) 6 SCC 667], a three-Judge Bench of the Supreme Court has examined the scope of [Article 77](#) of the Constitution. It has held that order issued in the name of President does not become Order of President passed by him personally; it remains essentially an order of Ministers on whose advice President acted and passed that Order. In that context, the Court examined the concept of "collective responsibility" and held that it essentially is a political concept. The country is governed by the party in power based on the policies adopted and laid down by it in the Cabinet Meeting. The Supreme Court quotes with approval *The British Constitution & Politics* (5th Edition by J. Harvey and L. Bather) that in its decisions, 'the Cabinet is a unity to the House'. While a minister can speak against any proposal in a Cabinet meeting, he must either support the policy decided upon or resign. But such resignations are infrequent. Ministers come from the same party and, at least initially, are fairly WPC.37284/17 homogenous in their political views. The minister's disagreement with the Government is usually over only one issue, and his basic political outlook remains unchanged. J. Harvey et al [as quoted in *Common Cause* (supra)] further observe:

"Thus the Cabinet stands or falls together. Where the policy of a particular minister is under attack, it is the government as whole which is being attacked. Thus the defeat of a minister on any major issue represents a defeat for the Government. However, today, unlike the nineteenth century, such defeats do not occur. The use of rigid party discipline ensures that the Government can always obtain a majority vote. Nevertheless, criticism may be so severe and widespread that the Government may modify its policy. If the minister identified with it feels that his prestige with the party has been badly damaged, he may resign, e.g. Sir Samuel Hoare (1935) over the proposals to partition Abyssinia.

In practice, therefore, all that collective responsibility means today is that every member of the Government must be prepared to support all Cabinet decisions both inside and outside the House."

28. The advantages of the cabinet collective-responsibility are enumerated by that, first, it counteracts departmental separation, for each minister has to be concerned with policies of other departments. Second, it prevents the policy of one WPC.37284/17 department being determined unilaterally. Since it is the Cabinet as a whole which decides, ministers are less

likely to be over influenced by their civil servants. Third, it ensures that Cabinet decisions are based on principles and not on personalities. Indeed, the collective responsibility does not apply to a minister's responsibility for his permanent officials or for his personal mistakes. Common Cause, after discussing various authorities and commentaries, finally concludes that although the Council of Ministers is collectively responsible to the House of the People, there may be an occasion where the conduct of a Minister may be censured if he or his subordinates have blundered and have acted contrary to law.

29. We must also acknowledge that the system of coalition politics has come to stay in many democratic countries including India, particularly in this State. In a coalition, political parties of divergent ideologies bury the hatchet and come together on a common platform, contest elections and form governments. Where such coalition governments are in power also the ministers of the cabinet are bound by the WPC.37284/17 unifying principle of collective responsibility. But an occasion may arise where it is necessary to retain dissentient members in the cabinet, if there is agreement on vital issues. In this context, we may refer to Halsbury's Laws of England (IVth Edition, volume 8(2)), where, in paragraph 417, it is inter alia observed thus:

"Failure to support his colleagues upon vital questions may render a minister liable to dismissal from office; but under the recognised practice, where an individual minister votes against his colleagues on a government question in the House of Commons, it is usual for him to tender his resignation immediately in order to prevent the appearance of disunion in which the administration would otherwise be involved. Where permission has been given to a minister by the Cabinet to vote against the administration upon a particular measure, resignation does not, it seems, necessarily follow; and where in an emergency members of different parties combine to form an administration, the opposition of a minority to important measures may be tolerated if there is agreement on other and still more vital matters, and it is therefore deemed necessary to retain the dissentient members in the Cabinet."

30. We may also consider the question regarding the enforceability of collective cabinet responsibility. Pertinently, WPC.37284/17 Alder (3rd Edition, McMillan, p.320) points out that the drastic sanction of a vote of confidence is the only method by which Parliament can enforce collective responsibility. Durga Das Basu in his Commentary on the Constitution of India too has endorsed this principle (8th Edition 2008, p.4689).

31. We may also state that in the Constituent Assembly Debates (Vol VII p.1159), the enforceability of collective responsibility has been explained by Dr.B.R.Ambedkar thus:

"All Members of the House are very keen that the Cabinet should work on the basis of collective responsibility and all agree that is a very sound principle. But I do not know how many Members of the House realise what exactly is the machinery by which collective responsibility is enforced. Obviously, there cannot be a statutory remedy. Supposing a Minister differed from other Members of the Cabinet and gave expression to his views which were opposed to the views of the Cabinet, it would be hardly possible for the law to come in and to prosecute him for having committed a breach of what might be called collective responsibility. Obviously, there cannot be a legal sanction for collective responsibility. The only sanction through which collective responsibility can be enforced is through the Prime Minister. In my judgment collective responsibility is enforced by the enforcement of two WPC.37284/17 principles. One principle is that no person shall be nominated to the Cabinet except on the advice of the Prime Minister. Secondly, no person shall be retained as a Member of the Cabinet if the Prime Minister says that he shall be dismissed. It is only when Members of the Cabinet both in the matter of their appointment as well as in the matter of their dismissal are placed under the Prime Minister, that it would be possible to realise our ideal of collective responsibility. I do not see any other means or any other way of giving effect to that principle."

32. We may examine in this context, [Article 75 \(3\)](#) of the Constitution of India:

(3) The Council of Ministers shall be collectively responsible to the House of the People.

(emphasis added) Similar is the language of [Article 164\(2\)](#). Undoubtedly, the Council of Ministers, under the Constitution, is collectively responsible to the Lok Sabha or the State Legislature only. The "collective responsibility" implies that a motion of no-confidence can be moved against the Council of Ministers as a whole and not an individual Minister, writes Kaul & Shakhder (M. N. Kaul & S. L. Shakhder's Practice and Procedure of Parliament, Ed.2009, P.25). Further, in view of the express constitutional WPC.37284/17 provision regarding collective responsibility of the Council of Ministers to the Lok Sabha and State Legislature, a motion expressing want of confidence in an individual Minister is out of order; under the Rules and only a motion expressing want of confidence in the Council of Ministers as a body is admissible (p.726).

33. The above assertions compel us to consider the doctrine of political question. Otis H. Stephens, Jr., and John M. Scheb in their American Constitutional Law (Vol.1, Thomson, 4th Ed., p.29) observe that, in a broad sense, all constitutional cases that make their way into the federal courts are political in nature. The political questions doctrine really refers to those

issues that are likely to draw the courts into a political battle with the executive or legislative branch, or that are simply more amenable to executive or legislative decision making. Under the political questions doctrine, cases may be dismissed as nonjusticiable if the issues they present are regarded as extremely "political" and thus inappropriate for judicial resolution, even though a case may meet the formal WPC.37284/17 prerequisites of jurisdiction, standing, ripeness, and exhaustion of remedies.

34. In *Marbury v. Madison* (1803), the US Supreme Court recognized that decisions on some governmental questions lie entirely within the discretion of the "political" branches of the national government--the President and Congress--and thus outside the proper scope of Judicial Review. Today such questions are called "political questions" [Encyclopedia of American Constitution, Macmillan Reference USA, 2nd Ed., (p.1949)]. Justice Brandeis in *Baker v. Carr* [369 U. S. 186, 217 (1962)] has discussed several categories of cases in which the Court has labeled particular controversies as "political." He concludes:

"It is apparent that several formulations which vary slightly according to the settings in which the questions arise may describe a political question, although each has one or more elements which identify it as essentially a function of the separation of powers. Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an WPC.37284/17 initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question."

36. In *Nixon v. United States* [506 U. S. 224 (1993)], the US Supreme Court has held that a controversy is nonjusticiable-- i.e., involves a political question--where there is "a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it" But the courts must, in the first instance, interpret the text in question and determine whether and to what extent the issue is textually committed. See *ibid.*; *Powell v. McCormack*, [395 U. S. 486, 519 (1969)]. As the discussion that follows makes clear, the concept of a textual commitment to a coordinate political department is not completely separate from the concept of a lack of judicially discoverable and manageable standards for resolving it; the lack of judicially manageable WPC.37284/17 standards may strengthen the conclusion that there is

a textually demonstrable commitment to a coordinate branch. Nixon examines the provisions concerning impeachment of a federal judge and observe that the language and structure of the provision are revealing. The first sentence is a grant of authority to the Senate, and the word "sole" indicates that this authority is reposed in the Senate and nowhere else.

37. To the above effect is the principle laid down by the Apex Court in its judgment in State of Karnataka (supra), where, it has been held in paragraph 49 that;

"the only sanction for its enforcement is the pressure of public opinion expressed particularly in terms of withdrawal of political support by members of Parliament or the State Legislature as the case may be".

38. This principle also is seen echoed in the judgment in R.K.Jain (supra), where, in paragraph 26, referring to the book Cabinet Government by Sir Ivor Jennings, the Apex Court has held thus:

WPC.37284/17 "On the Cabinet Minister's responsibility, at page 449, he states that when it is said that a Minister is responsible to Parliament, it is meant that the House of Commons (in our Constitution the Lok Sabha) may demand an explanation. If that explanation is not considered satisfactory and the responsibility is collective, the House will vote against the Government and so compel a resignation or a dissolution. If the responsibility is not collective, but the act or advice was due to the negligence of or to an error of judgment by a Minister and the House disapproves, the Minister will resign."

39. Here, too, the constitutional mandate is clear from the language of Articles 75(3) and 164(2) and if there is any ambiguity, that is clarified by Dr.B.R.Ambedkar in the Constituent Assembly Debates and the Apex Court in the aforesaid judgments. The Ministers or the Cabinet as a whole is answerable to the House of Parliament or Assembly, as the case may be and their collective responsibility has to be enforced only through the Prime Minister or Chief Minister or else by a non confidence motion. Loss of confidence may lead to the Cabinet's ouster by way of vote of confidence. We do not think there is another method. Then, the compelling conclusion WPC.37284/17 is that the very issue of collective responsibility, and that responsibility to the House at that, is a political question.

40. In the background of the aforesaid principles and the precedents on the subject, now we shall proceed to examine whether, on facts, the petitioner has established any of the aforesaid grounds in this case.

41. We have already mentioned that the petitioner sought a writ of quo warranto, first, by relying on Ext.P1 judgment in W.P(C). 36047 of 2017 filed by Sri.Thomas Chandy, who was

a Minister in the State Cabinet. The petitioner contends that the moment Ext.P1 judgment was rendered, the Council of Ministers lost its constitutional authority to continue in office. It is because this Court in that judgment declared that there was cessation of collective responsibility.

42. W.P(C).36047 of 2017 was filed by Sri.Thomas Chandy. He mainly challenged a report submitted by the District Collector, Alleppey. A Division Bench of this Court, through Ext.P1 judgment, dismissed the writ petition. To support his plea, the WPC.37284/17 petitioner's counsel mainly relied on paragraphs 11 and 12 of the judgment. They read as under:

"11. The facts of this case present a very unusual scenario. The writ petitioner has conceded in the very first line of his writ petition that he is "a Minister in the Council of Ministers of the State of Kerala". In the same breath, he arrays the State of Kerala, in the manner mentioned above as the first respondent in the petition. He then alleges rather explicitly that certain action has been initiated against him "based on the intervention of the office of the Minister for Revenue" (see paragraph 6 of the writ petition). It is ineluctable that while he continues as a Minister of the State of Kerala, the rigor of the prescriptions of [Article 164](#) of the Constitution of India and specially [Article 164\(2\)](#) therein applies to him in full force. The principle of Cabinet Collective Responsibility is couched in this Article, which predicates that the Council of Ministers shall be collectively responsible to the Legislative Assembly of the State. It is, therefore, irrefragable that the Ministers in a Cabinet must act as one or perish as one because the principle that applies is that even if a no confidence motion is carried against one of the Ministers, the whole Cabinet must resign. This is the immutable principle that is couched in the W.P.C.No.36047 of 2017 14 provisions of [Article 164](#) of the Constitution of India, which is intended to ensure accountability of the Cabinet as a unit to the legislative and to the people of this great nation.

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12. In the case at hand, a Minister has approached this Court seeking certain reliefs against the Government of the State of Kerala, of which he is a part and against the State functionalities, who are exercising statutory functions under the various Statutes, Rules and Regulations, to which I will advert presently, explicitly alleging that such action was "based on the intervention of the office of the Minister for Revenue". Sri.K.V.Sohan, the learned State Attorney submits before us that an examination of the contents of this writ petition may be made only if we find this petition to be maintainable. According to him, since the petitioner is a Minister and since he has chosen to file this writ petition against the

Government of Kerala arrayed as a respondent, this writ petition itself is not maintainable. This submission of Sri.K.V.Sohan is more or less on the lines of our prima facie opinion as above and we thus thought it fit to allow the learned counsel appearing for the parties to address on that issue as a preliminary one.

41. Having considered the submissions made in the light of the aforesaid paragraphs of Ext.P1 judgment, we may straight away confess our inability to accept the petitioner's plea. Ext.P1 judgment, particularly its paragraphs 11 and 12, would show that the District Collector's report was made allegedly at the Revenue Minister's intervention. This Court dismissed the writ petition on the reasoning that a minister in the Cabinet WPC.37284/17 who, in view of [Article 164\(2\)](#) of the Constitution of India, is collectively responsible to the Legislature, cannot file such a writ petition. And on that ground, the writ petition was held to be not maintainable. The judgment, even on a cursory reading, would not lend support to conclude that this Court has entered a definitive finding that there was, in fact, loss of collective responsibility. Therefore, this plea now urged by the learned counsel is only to be rejected, and we do so.

42. The second ground on which the plea of loss of collective responsibility was urged is that in the Cabinet meeting held on 15.11.2017, four ministers, the nominees of Communist Party of India, abstained; so, there was loss of collective responsibility. From Articles 75 and 164 of the Constitution of India and the judicial precedents we have noticed, it is clear that collective responsibility of the Cabinet is to the Legislature, and that collective responsibility prevents a member of the Cabinet from openly disowning or even criticizing the Cabinet decisions, which sometimes include even the individual decisions of the other ministers. In other WPC.37284/17 words, as pointed out earlier, the Cabinet survives or perishes as one.

43. It seems to be true that on 15.11.2017, four ministers abstained from the Cabinet meeting, the reasons for which are not relevant for the purposes of this judgment. The concept and meaning of collective responsibility being as seen above, mere abstention from a meeting of the Cabinet, with nothing more, cannot attract loss of collective responsibility; much less is it sufficient to dislodge a minister or the Cabinet itself as sought for by the petitioner. We say this because the petitioner himself has no case that these absentee ministers have disowned or even criticized the decisions taken in the Cabinet meeting held on 15.11.2017 in their absence, nor has the petitioner set up a case that these ministers acted in any other manner resulting in loss of collective responsibility. In this case, the four ministers have remained absent but have conducted themselves as a collectively responsible body along with other members of the Cabinet. They did sail along with the other ministers of the State Cabinet. Therefore, their mere absence from the meeting of the Cabinet cannot result in loss

WPC.37284/17 of collective responsibility attracting any of the consequences discussed above.

In the light of the above conclusions, we find no reason to admit this writ petition. The writ petition merits only to be dismissed and we do so.