

File No.

1950 (Nov./Decr.)

Collection No.

III-44-17

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Pros.  
Serial

Nos.

III-44-17

Subject.

H.M.S.

Appointment of a Judge in the Madras  
High Court — Recommendation of Mr. Justice  
Koman & subsequent developments.

Previous References.

Later References.

No.1/3/50- Judl.  
NEW DELHI,  
3rd December 1950.

My dear Jawaharlal,

I am sending herewith the file regarding the appointment of a Judge for the Madras High Court. I would be grateful if you would kindly go through the relevant papers, as, before I proceed further, I would like to have a discussion with you.

2. There is unanimous recommendation from the Chief Justice of Madras, the Chief Minister and the Governor in favour of the appointment of Mr. Koman, an I.C.S. District Judge. They have specifically said that he is the best candidate available, although, as I told them earlier, his record on paper is unimpressive. This recommendation is backed by the opinion of two former Chief Justices of Madras.

3. The Chief Justice of India did not agree with this recommendation and suggested two names, one of which had already been rejected twice by the Chief Ministers of Madras for reasons which are prima facie valid - (a) lack of character; (b) insufficient practice and lack of recent familiarity with judicial work; and (c) likelihood of unfavourable public reactions. The other suggestion we put to the Chief Minister of Madras. The Ministry resented this so much that they sent a deputation of three Ministers with a letter from the Chief Minister written in great anger. I took a firm stand on the constitutional position and told the Chief Minister that I could not place the letter on official file, being so objectionable in content and tone. They all appreciated the constitutional position and withdrew the letter. The second letter which he sent, though less objectionable, was again calculated to rouse the ire of the Chief Justice of India. I, therefore, returned that letter also and actually had to send a draft which avoided all the bitterness without affecting the strength of the case which they wished to represent to us. It was this letter which was actually placed on the file.

4. The Chief Justice of India has, however, taken umbrage even at this and has written a note which, if I may say so with respect to him, imports extraneous considerations and, in some respects, is not quite correct. He does not seem to appreciate that, whatever may be the position on paper in respect of Koman's record, or the opinion which persons whom he or I may consult hold regarding him, the recommendation is supported by the unanimous opinion of the three State authorities competent to advise us and by two predecessors of the present Chief Justice of Madras as well. This aspect of the matter, however, does not trouble me so much as the prospect held out in the Chief Justice's note that he might indulge in a public controversy with the Government of Madras in this matter.

5. I might add that I discussed this case with Rajaji also before the file was sent to the Chief Justice of India. He thought that he might send for the Chief Minister and try to persuade him to withdraw the recommendation in favour of Koman, but, having met the Madras Ministers already and known the tempers roused in this case and the strong views they held, I felt that that would be both profitless and fruitful of further controversies. I do not think the Madras Ministry would be prepared to go back upon the proposal.

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6. I have had a precis of the case prepared to help you in studying it. There is some personal correspondence between me and the Chief Minister which you might like to see. If you would, I shall send it on to you or else I can tell you about it when we discuss.

7. I am sorry to trouble you with this case. I tried my best to avoid a controversy between the Chief Justice of India and the Madras Authorities, but, while I succeeded, to a large extent, with the Madras Ministry, the note of the Chief Justice of India unfortunately does not avoid it.

Yours

Sd/- Vallabhbhai Patel

The Honourable  
Shri Jawaharlal Nehru,  
Prime Minister,  
NEW DELHI.

m P.S. I am also sending a brief note on the points made by the Chief Justice. More I shall speak to you when we meet.

PRECIS OF THE CASE REGARDING  
THE APPOINTMENT OF MR. JUSTICE KOMAN.

- p.2/c S.N.1 3rd August 1950 : Chief Minister of Madras wrote to Chief Justice that a vacancy had occurred, suggesting Mr. Koman for the vacancy that had occurred, explaining why Mr. Justice Koman's name was not considered on a previous occasion.
- p.4/c 6th August 1950 : Chief Justice replied accepting Mr. Koman and saying that the vacancy should not be treated as a Service vacancy or a Bar vacancy, but for a considerable time some of the Judges of the High Court would have to be chosen from the Services.
- p.6/c 8th August 1950 : H.F. the Governor accepted the recommendation in favour of Mr. Justice Koman.
- p.7/c S.N.2 & 3 23rd August 1950 : Home Secretary wrote to the Chief Justice Minister of Madras seeking further clarification and asking for confidential reports.
- p.8/c 5th Sept. 1950 : Chief Minister of Madras replied to Home Secretary explaining that he was not aware why his predecessor did not recommend Mr. Koman earlier although he was recommended by the then Chief Justice, that the present Chief Justice was also for recommending Shri Koman in 1948 but did not press the claim out of deference for Shri Ramaswami Reddiar's views and that another chance came during his Chief Ministership he preferred to wait until he familiarised himself with Shri Koman's work. Chief Minister enclosed his correspondence with the C.J. from which it was clear that the only District Judge who was senior to Shri Koman was still unsuitable and that while the Chief Justices were all along in favour of Shri Koman, the present Chief Minister's predecessor Shri Ramaswami Reddiar stood in the way. There is also a letter from the Governor repeating his previous agreement in favour of Shri Koman.
- /when
- p.14/c
- p-15/c S.N.4 Telegram from H.M. Home to Chief Minister stating that Koman's record seemed unimpressive and asking for reconsideration of proposal as undue weight seemed to have been attached to the necessity of appointing a District Judge to the vacancy.
- p.16/c S.N.5 Reply from Chief Minister Madras reiterating recommendation in favour of Shri Koman and agreeing with the views of the Chief Justice who cited the views of Sir Lionel Horwill and Sir Frederick Gentle in favour of Shri Koman and stating that there are no outstanding members of the Bar of whom he could say that they were definitely better than Koman. "In my opinion, Koman would make a sound and safe Judge". On the basis of these opinions, the Governor also entirely agreed that they should press the recommendation in favour of Shri Koman.
- p.20/c
- p.10/N 12th Oct. 1950 : Papers forwarded to Hon. the Chief Justice of India with a proposal agreeing to Shri Koman's appointment.



p.11/N

14th Oct. 1950 : Hon. the Chief Justice returned the file stating that the Chief Justice's observation read very unconvincing and that enquiries independently made by him confirmed the view that Shri Koman's work as an Acting Judge in the High Court was quite unsatisfactory, that he had little legal intellect which would help in the decision of the cases in the High Court and that he was reputed to be a nice social gentleman, but that was above all. He stated it as his view that the appointment, if made, would only make the Madras Bench weaker. Mr. Justice Kania suggested Shri Thyagarajan, the Official Assignee of Madras and Shri Uma Maheshwaram who was stated to be an able lawyer with quite good practice at the Madras Bar. He also suggested as an alternative the names of Mr. Justice Panigrahi or Mr. Justice Narsimham I.C.S. of the Orissa High Court who were both Madrasis.

p.12/N

17th Oct. 1950 : Home Secretary noted ruling out Shri Thyagarajan because his appointment had been previously opposed by the Madras Government and suggesting that the alternative name suggested by the Hon. the C.J. of India might be conveyed to the Chief Minister for his views pointing out, incidentally, that Shri Uma Maheshwaram is a brother-in-law of Sir Alladi. H.M. approved the suggestion made by the Home Secretary.

p.24/c S.N:

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24th Nov. 1950 : Letter from the Chief Minister protesting against an alternative name having been suggested even though after very careful consideration, more than once, Shri Koman's name had been recommended unanimously by the Chief Justice, himself and H.P. the Governor of Madras and stating that it was impossible for them to agree to Shri Uma Maheshwaram's name.

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28th Nov. 1950: File was sent to Hon. the C.J. of India pointing out the difficulties experienced in regard to the alternative suggested by the Hon. the C.J. and stating that during the interval a deputation of Ministers came to wait on H.M. to represent their feelings against the procedure adopted in suggesting an alternative name.

pp.14-18/N

1st Dec. 1950 : Hon. the C.J. of India's long note taking exception to the Madras Chief Minister's attitude and making the following points:-

(a) Chief Minister was wrong in taking the initiative in regard to the appointment. Under the instructions the initiative rests with the Chief Justice of Madras. The C.J. has also referred to a similar mistake last year when the Chief Minister, in terms, wrote to the Chief Justice of Madras to suggest the name of a suitable Mohamedan gentleman.

(b) "The Madras political controversy amongst the Ministers is widely discussed in the newspapers and is not certainly such as to impart public confidence in the straightforwardness of the Ministry's selections".

(c) The Advocate's name which the Hon. the C.J.

suggested was given to him in Delhi by persons well conversant with the Madras Bar. In view of the Chief Minister's approval of that name and in which the Chief Justice and H.E. the Governor concurred " I have nothing more to say with regard to that Advocate".

(d) If Shri Thyagarajan's name could not be considered because previously it had been rejected, how could Shri Koman's name be considered because it had been similarly rejected.

(e) The whole procedure and attitude in this case conveys the impression that the Madras Ministry considers the High Court a Department of the State Government and thinks of making appointments there as if it is their sole concern and right. This position cannot be accepted.

(f) The Chief Minister had no justification for questioning the procedure adopted and could have well spared himself a statement of the well-recognised principles in regard to the appointment of Judges. " If newspaper reports are an indication of the public opinion of the administration of the State of Madras, one wonders if the Ministry's selections, in the public opinion, are made on those principles."

(g). " I do not see any reason to modify my previous note about Mr. Koman's capacity and eligibility to work as the High Court Judge and if the Chief Justice of Madras and the Madras State Ministry are unable to find a more suitable man it may perhaps be better to leave the post vacant for some time, so that the whole Province might not suffer.

(h). If it is inevitable that we should accept the recommendation of the Chief Minister of Madras, it had better be made clear to the public as to what functions the State Ministry, in fact, plays in the appointment of Judges of the ~~High Court~~ Madras High Court. " I wonder whether I should not, at a suitable opportunity, publicly disclose what part that State Ministry plays in the selection and appointment of a Judge in the Madras High Court."

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**H.M.Home's comments on the  
note of the Hon. the Chief  
Justice of India.**

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1. Point (a) is valid. Under our instructions, it is for the Chief Justice to write to the Chief Minister pointing out that a vacancy has occurred and making his recommendation. At the same time it is open to the Chief Minister to disagree with the recommendation and request the Chief Justice to consider other names. Our instructions provide that the whole correspondence should be sent to us, so that all the views in respect of all candidates considered would be before us. The attention of the Chief Minister will be drawn to the mistake in procedure and he will be requested to follow the correct procedure. H.P.M. is familiar with the case of the Muslim Judge and the attitude taken up by the Chief Justice of India at that time.
2. The Hon. the C.J. has imported an extraneous matter into the consideration of this case. What appears in the newspapers is not necessarily correct and, in any case, apart from being irrelevant, accepting newspaper reports on their face value would be unjudicial.
3. No comments on (c)
4. Shri Thyagarajan's name was rejected for reasons mentioned in para 3 of my letter to H.P.M. As regards the rejection of Shri Koman's name by the then Chief Minister, as far as I remember, the Chief Minister told me that it was because Shri Koman did not have a good character, presumably socially, being a bachelor. The Chief Justice accepted the rejection of Shri Koman's name out of deference to the Chief Minister. There is nothing to show that the Chief Minister rejected the name of Shri Koman's merits as a Judge.
5. The conclusion drawn by the Hon. the C.J. of India in (e) does not necessarily follow in the handling of this case by the Chief Minister. The Chief Minister's attitude was that due to the manoeuvrings of certain gentlemen in Delhi that name had been suggested by the Hon. the C.J. of India and the gentleman concerned had actually started canvassing for himself in Madras even before our official telegram reached the Chief Minister.
6. Here again the C.J. has introduced an extraneous matter on newspaper reports. I need not comment any further.
7. It is not possible to leave the vacancy unfilled. The arrears accumulate and work suffers. Unfortunately there is no provision in the Constitution for officiating appointments. There is, therefore, no escape from a permanent appointment.

8. The threat which the Chief Justice of India has held out, he has already executed once. H.P.M. will remember the embarrassment caused to all of us at the time of the inauguration of the Supreme Court when in his inaugural speech the Chief Justice referred to import of other considerations in judicial appointments. The C.J. then had in mind the appointment of a Muslim Judge in Madras. If the C.J. executes his threat again, I do not think that the Madras Ministry would keep silent, nor are they likely to submit to any suggestion for deferring to the views of the C.J. of India. In fact, this is a matter which might create grave constitutional issues and a public controversy might adversely affect the prestige of the Chief Justice of India and the reputation of the Madras Ministry. In either case, the threatened public controversy had better be avoided.
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suggested was given to him in Delhi by persons well conversant with the Madras Bar. In view of the Chief Minister's disapproval of that name and in which the Chief Justice and H.E. the Governor concurred " I have nothing more to say with regard to that Advocate".

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(f) The Chief Minister had no justification for questioning the procedure adopted and could have well spared himself a statement of the well-recognised principles in regard to the appointment of Judges. " If newspaper reports are an indication of the public opinion of the administration of the State of Madras, one wonders if the Ministry's selections, in the public opinion, are made on those principles."

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CONFIDENTIAL

P.S. Kumaraswamy Raja  
Chief Minister  
PREMIER OF MADRAS



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FORT ST. GEORGE  
MADRAS

24th November 1950.

My dear Sardarji,

I am in receipt of your kind D.O. letter No. 850-DPM/50, dated 20th November 1950. I cannot adequately express my feelings of gratefulness to you for the very kind expressions of advice you have given therein. Your suggesting a sound course for adoption by me in a situation like the one I am facing, and thus guiding me, indicate what a fatherly affection and kindness you have for me, which I shall never forget and for which I shall feel ever indebted to you.

In my previous correspondence, I never meant any disrespect or offence to anyone; but I only wanted to express my feelings of disagreement with the suggestion which the Chief Justice of India made in disapproval of the unanimous recommendation from Madras of Koman's name. Perhaps, I might have transgressed the limits of decorum in the use of expressions in my previous correspondence. However, that you as an elderly statesman should have taken such a kind and patronising attitude towards me in guiding me in the discharge of my functions, shows what a soft corner of your heart I am occupying.

I once again express that I am very much grateful to you for the benevolence and kindness you have shown to me. I am sending the official letter separately as advised by you.

With kind regards,

Yours sincerely,

The Hon'ble Sardar Vallabhbhai Patel,  
Deputy Prime Minister of India,  
New Delhi.

✓ D.O.No. 850 DPM '50,  
New Delhi, 20th Nov. 1950.

My dear Raja,

I have seen the attached letter. If this letter goes on the file, I am afraid it will provoke a strongly worded counter reply from the Chief Justice and both you and I would unnecessarily get involved in a controversy. I have explained the whole position to you in detail and I do not think it will serve any useful purpose to join issue with the Chief Justice of India on the point of procedure, propriety, etc. The Chief Justice can very well retort that, if all that he is expected to do is to register his approval to the proposals made by the State Government, it is quite pointless for him to be consulted and certainly the Constitution would not have provided for a mere formality to be observed. I do not think we can contest the right of the Chief Justice to make suggestions if he feels that a particular person would be suitable in preference to one already suggested by you, even though with the concurrence of the Chief Justice and the Governor.

Having regard to this basic position, I think that your letter, if placed on the file, would put us and you both in a vulnerable corner from which it would be difficult to extricate ourselves. Nor would it be fair on your part to say that we have vetoed your proposals. The whole thing is still in the stage of consideration and I do not think we can accept the position that merely asking you to consider some other name is either derogatory to your prestige or involves supersession of your proposals.

At the same time, I quite understand your feelings and I have already expressed myself at some length in the personal letter that I wrote to you. You can reiterate your position in a manner less likely to invite controversy and, for purposes of record, I have ventured to draft a letter which, if you send on to me, would be placed on the file, in stead of your letter of the 12th November. I hope, on further consideration, you will realise both my difficulty and my embarrassment in having to place the present letter on official file.

With kind regards,

Yours sincerely,

The Hon'ble  
Shri P.S. Kumaraswami Raja,  
Chief Minister, Govt. of Madras,  
MADRAS.

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DRAFT.

I am in receipt of Government of India's telegram, dated the 17th October 1950 stating that the Chief Justice of India is not satisfied that Koman is of requisite calibre for appointment as High Court Judge, and that he suggested Shri Umamaheshwaran who, according to his information, is an able lawyer with a good practice in Madras and asking me to offer my views on the said choice in consultation with the Chief Justice of Madras and His Excellency.

I should like to say at once that I was surprised to receive this telegram. The correspondence, which I had enclosed both with my original recommendation and in answer to a subsequent query from the Government of India, I feel, should have convinced the Government of India and the Chief Justice of India that we had already considered carefully the claims of members of the Bar and other eligible members of the judicial Service for this vacancy. The Chief Justice of Madras clearly stated that there were no outstanding members of the Bar of whom he could say that they were ~~no~~ distinctly better than Koman and that Koman, in his opinion, would make a sound and safe Judge. With this opinion both H.E. and myself fully agreed. If I may say so with due respect and without meaning any offence, ~~that~~ after this any reference to us of any particular name implied a lack of confidence in our judgment or in the amount of consideration which we ~~gave~~ gave to the subject. We could also have been presumed, as we actually did, to have considered members of the Bar as a whole individually and collectively, of whom Mr. Umamaheshwaran is one, before submitting our recommendation, I should like to add also that it is not only legal capacity and ability of the person recommended which are relevant but other factors, as,

for example, a person's integrity, his sense of responsibility and his capacity to hold the scales of justice even between many conflicting interests.

Having regard to all these considerations, we reiterate our previous recommendation that Koman should be appointed a Judge of the High Court. We feel that we are fully justified in repeating the submission again not only because of the local knowledge and experience we have of the members of the Bar and Judicial service in the State but also because our choice is supported by the recommendation of the present Chief Justice and two of his predecessors. I think we are entitled to claim that such a strongly backed and agreed choice should prevail over the gentleman whom the Chief Justice of India has suggested. Our own knowledge of him makes it impossible for us to agree to his name being considered.

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P.S. KUMARASWAMI RAJA,  
Chief Minister of Madras.

Fort St. George,  
Madras, 12th Nov. 1950.

Dear Sri Sardarji,

I am in receipt of the Government of India's telegram, dated 17th October 1950, stating that the Chief Justice of India is not satisfied that Koman is of requisite calibre for appointment as High Court Judge, and that he suggested Sri Umamaheshwaran who, according to his information, is an able lawyer with a good practice in Madras; and asking me to offer my views on the said choice in consultation with the Chief Justice of Madras and His Excellency.

The procedure of the Chief Justice of India, himself suggesting the names is unusual and novel. It is also not in accordance with the instructions issued by the Government of India prescribing clearly the procedure to be followed in making recommendations for the appointment of High Court Judges. It is surprising, that such a procedure as suggesting names and then calling for our views, should be adopted at the Government levels.

I am at a loss to know what considerations prevailed for making such a novel departure as this, from the well established and known methods in vogue hitherto. This being the first time that the Madras Government is made to face such an embarrassing situation, I hasten to express the feelings of unhappiness and protest, which I have in the matter.

Since I am objecting to the procedure adopted by Government of India, I have not sent the Government of India's telegraphic communication, dated the 17th October 1950, to the Chief Justice of Madras, for his views on the choice of Umamaheshwaran as directed in that telegram, only to avoid causing further embarrassment to the Chief Justice and the Government of Madras. Certain important aspects of our previous recommendations have been ignored, and we are virtually put into an unpleasant situation, in being asked to express views on matters, already covered by the recommendation that we have sent. When the Government of India had previously asked us to reconsider Koman's name, the Chief Justice of Madras, in reiteration of his earlier recommendation has stated in his letter, dated 28th September 1950, thus: "There are no outstanding members of the Bar of whom I can say that they are distinctly better than Koman. In my opinion he would make a sound and safe Judge." I agreed with the above opinion of the Chief Justice and sent our reconsidered views to the Government of India, of course with the concurrence of His Excellency also in the same.

The said remark of the Chief Justice of Madras about there being no outstanding members of the Bar better than Koman, obviously proceeds on the basis of his having considered the members of the Bar as a whole, individually and collectively, of whom Umamaheshwaran is one. But in the face of the said recommendation, to confront him now with the unpleasant query as to what he thinks about such and such an individual member of the Bar, is really to put him in an embarrassing situation. Should the Government of India give room for such an inconvenient situation caused by the novel method adopted by the Chief Justice of India?

In making appointments of Judges to the High Court, other things, over and above the persons' judicial capacity and ability, have also to be taken into account. If legal capacity and ability alone, were to be the



factors to weigh in the selection, then the Government may have no place in the scene: and everything can be done on the recommendation of the Chief Justice and the Chief Justice of India. But that is not the case. The State Government is also assigned its due share in the responsibility to recommend on the suitability of persons. The Chief Justice and the Government of Madras being local authorities competent to judge local men and matters, would have to make recommendations on the basis of their direct and personal knowledge of all factors, germane to the suitability of persons for appointment as High Court Judges. While making recommendation, the Government of Madras would be obliged to take into account, in addition to the legal capacity and ability of the persons recommended, certain other factors also, like the person's integrity and high sense of responsibility for the maintenance of stability of conditions in the State; and his spirit of sympathy with the State Government's endeavours for the maintenance of social justice, peace and stability. By this I do not at all mean that Judges should take attitude in Government's favour in deciding judicial matters. But I mean that they should be men with a background of sympathy in them towards the State Government's endeavours to maintain stability of conditions in the State, which is becoming difficult day by day. But if the State Government's recommendations, made as they are, on consideration of the several factors as stated above, besides the legal capacity and ability of the persons recommended, are to be vetoed in the manner it is done by the Centre, there would be absolutely no safety to the State Government.

For the present vacancy in the High Court Bench, both the Chief Justice and the Government of Madras recommended Sri Koman's name to the Government of India for appointment as High Court Judge. Sri Koman, I.C.S., had once acted as Judge of the Madras High Court. The Chief Justice of Madras, who is competent to judge Koman's capacity and also his general reputation in the judicial field is of opinion that he is suitable for promotion. It may be mentioned that even previously the former Chief Justice, Sir Frederick Gentle, had also recommended Sri Koman for one of the earlier vacancies. Even with regard to Koman's first appointment as Judge of the High Court in 1945, it was done by the then Chief Justice, Sir Lionel Leach, not on any considerations of favouritism or influence, but on Koman's merit and capacity. If Sri Koman was wanting in capacity, he would not have been appointed at all as Judge in the High Court in the time of Sir Lionel Leach. Nor would the subsequent Chief Justices have recommended him, had his work as High Court Judge been found unsatisfactory. So the considered opinion of all the three Chief Justices in succession, about Sri Koman would point out his suitability for appointment as Judge of the High Court. I must, therefore, respectfully stick to my original recommendation, particularly because the Chief Justice of Madras has stated in his previous letter of recommendation that there are no outstanding members of the Bar (this includes the nominee of the Chief Justice of India) of whom he can say that they are distinctly better than Mr. Koman.

I, therefore, request you to consider the position in the light of what I have stated in this letter.

Yours sincerely,  
Sd. P.S. KUMARASWAMI RAJA

The Hon. Sardar Vallabhbhai Patel,  
Deputy Prime Minister of India,  
New Delhi.

P. S. Kumaraswamy Raja,  
CHIEF MINISTER OF MADRAS



17  
FORT ST. GEORGE  
MADRAS

10th November 1950.

Confidential.

My dear Sardarji,

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I thank you very much for your kind letter dated 6th November 1950, which was sent through Sri K. Madhava Menon. In a state of intensity of feelings that I then was, as a result of the Government of India's adopting the unusual procedure of suggesting (at the instance of the Chief Justice of India) a named individual for the expression of my views on him, I am sorry, I wrote my previous letter to you with a tenour, somewhat unusual. But your kind letter with its sound advices and pacifying tone, has given me much relief and satisfaction, for which I am very thankful to you.

My three colleagues who met you at Delhi, have told me about the kindness and courtesy you showed to them during their visit to you, for which also I express my respectful thanks to you.

I am sending separately an official letter to you noting therein my reactions to the Government of India's telegram dated 17th October 1950 suggesting Umamaheswaran's name, so that the same may go into the official file relating to the appointment of the High Court Judge for the present vacancy in the Madras High Court.

I once again thank you for your kindness and sympathetic appreciation of the situation here.

With best regards,

Yours sincerely,

The Hon'ble Sardar Vallabhbhai Patel,  
Deputy Prime Minister,  
Government of India,  
New Delhi.

SECRET & PERSONAL.

46  
No. 820-DPM/50  
1 Aurangzeb Road,  
New Delhi, 6.11.1950.

My dear Raja,

*S. S. Sankaranarayanan*  
Thank you for your letter of the 3rd November 1950, which Madhava Menon and Sitarama Reddy gave me this morning. I have discussed the whole case with them, and they will apprise you of the exact position. I have not placed your letter on the official file and am keeping it entirely to myself.

I fully appreciate your feelings. Obviously, you have been quite incensed at the reference we made to you, but before putting your ideas on paper or sending a deputation, it would have been better if you had telephoned to me. I would then have explained to you everything, and all this anger and precipitate action in sending the deputation would not have been necessary.

From our telegram to you, you need not have inferred that we were necessarily going to accept the name that was suggested. After all, in all these matters, we have to proceed constitutionally. When your letter originally came, we had to make a back reference to you in order to prepare the case properly for the views of the Chief Justice of India. I know the views which he holds about Service judges; being a member from the Bar, he naturally prefers men from the bar. I, therefore, wanted to eliminate this possible criticism from him and made a reference to you. I had to do so, also because, from the letter of your Chief Justice to you, it was possible to draw the inference that the question of appointing a Service judge weighed more with him than the policy to appoint the best available candidate. After your reply made it clear that Koman was the best available candidate and that he had been previously nominated by other Chief Justices as well, purely on merits, I approved of the recommendation and made a reference to the Chief Justice. I think it would be unfair either on my part or on yours to assume that the Chief Justice of India should endorse the recommendations that we make. He is entitled to his views, whether formed by himself or in consultation with his colleagues. He is also entitled to put them on paper. This is exactly what happened. The Chief Justice of India, who is generally very reluctant to make any suggestions of his own, in this case made one suggestion. Whatever the reasons or circumstances underlying that suggestion may have been, I think you will agree that we could not have refused to pursue it, and it was necessary on our part to follow it up. The only way we could have done so was to refer the matter to you for your comments. It was far from our intention in any way to embarrass you or to do something which would diminish your prestige or status. Just as the Chief Justice is entitled to express his views, you are also entitled to say 'no' and give your reasons therefor. When the question comes here, we naturally give due weight and importance to the views which you and your Chief Justice would form on the basis of your local knowledge. You can depend on us to take all this into consideration before finalising the appointment. It is not that we have always

P.T.O.

P. S. Kumaraswami Raja,  
CHIEF MINISTER OF MADRAS



20  
FORT ST. GEORGE  
MADRAS

Confidential.

3rd November 1950

Dear Shri Sardarji,

I am obliged to write this letter to you bringing to your kind notice my feelings as also the feelings of my colleagues of the Madras Cabinet over the question of filling up the present vacancy in the Madras High Court. I am in receipt of your Telegram dated the 17th October 1950 asking me to express my views in consultation with the Chief Justice of Madras and His Excellency on the choice of one Sri Umamaheswaran of the Madras Bar. I have not yet taken further action on the said Telegram, by communicating the same to the Chief Justice of Madras and inviting his views; because before doing so, I thought it better to place before you the feelings of myself and my colleagues in this matter, it being more a political issue of importance and expediency and not a personal one affecting any of us personally. We feel that it is a matter vitally affecting the Madras Government's status and prestige, the outcome of which is sure to affect the Government's position with far reaching consequences.

For the present vacancy in the High Court Bench, both the Chief Justice of Madras High Court and myself recommended Sri Koman's name to the Government of India for appointment as High Court Judge. Sri Koman, I.C.S., District Judge, had once acted as the Judge of the Madras Court. The Chief Justice who is competent to judge Sri Koman's capacity and also his general reputation in the Judicial field, is of opinion that he is suitable for promotion. It may be mentioned that even previously the former Chief Justice Sir Frederick Gentle had also recommended Sri Koman for one of the earlier vacancies. Even with regard to Sri Koman's first appointment as Judge of the High Court in 1945, it was done by the Chief Justice Sir Lionel Leach, not on any considerations of favouritism or influence, but on Koman's

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accepted any suggestion from the Chief Justice. In fact, in the case of the appointment of Mr. Justice Bashir Ahmed, we did prefer your recommendation to his and appointed him just on the eve of the Constitution coming into force. You need not, therefore, have taken this reference amiss. After all, constitutional provisions and practice have to be followed. We cannot afford to do ~~any~~ everything of our own will. Certain consultations have to be gone through, and those consultations need not be ~~an~~ derogatory of one authority or the other.

I can quite realise that your inference that this was due to some machinations must have upset you, but we should not let such things provoke us into precipitate action. What matters is the final result, and if we can achieve it by taking everybody with us, it is worthwhile doing so.

I hope that, in these circumstances and in the light of the discussions which I have had with your colleagues, you will let this blow over and let me have your views in regard to the particular suggestion made by the Chief Justice of India.

Yours sincerely,

The Hon'ble  
Shri. P.S. Kumaraswami Raja,  
Chief Minister of Madras,  
Fort St. George,  
M A D R A S.

V.



P. S. Kumaraswami Raja,  
CHIEF MINISTER OF MADRAS



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Confidential.

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merit and capacity. If Sri Koman was wanting in capacity, he would not have been appointed at all as Judge in the High Court in the time of Sir Lionel Leach. So the considered opinion of all the three Chief Justices in succession, about Sri Koman would point out his suitability for appointment as Judge of the High Court.

This time, both the present Chief Justice and myself recommended Sri Koman's name to the Government of India for appointment as Judge of the High Court. But our recommendation did not find favour with the Government of India; and on 14th September 1950, I received a Telegram from the Government of India, asking me to reconsider the recommendation of Koman's name in consultation with the Chief Justice and His Excellency. I am at a loss to know for what reasons, the Government of India took the view, as it did, against the acceptance of Koman's name, ignoring the recommendation made unanimously by the Chief Justice and the Madras Government. However when the Chief Justice, Madras, was communicated with the said telegram of the Government of India, and accordingly asked to reconsider Koman's case, the Chief Justice reiterated his previous recommendation and observed thus "There are no outstanding members of the Bar of whom I can say that they are distinctly better than Koman. In my opinion he would make a sound and safe Judge".

I agreed with the above opinion of the Chief Justice and sent to the Government of India the reconsidered views of the Chief Justice and myself, recommending Koman's name. Of course on both the occasions, His Excellency also agreed with us. Thus the recommendation of Koman's name by the Chief Justice and myself and His Excellency, was unanimous. And in the normal course, no disagreement would be entertained by the Government of India with the above recommendation of Koman's name, especially when his suitability for promotion was pointed out by more than one Chief

Justice of Madras High Court, including the present Chief Justice, whose opinion as to Koman's integrity and capacity is entitled to a very great weight.

But to my surprise I have again got the telegraphic communication dated 17th October 1950 from the Government of India, vetoing Koman's name and themselves suggesting the name of one Sri Umamaheswaran, a member of the Madras Bar, and asking me to express my views in consultation with the Chief Justice of Madras and His Excellency on the choice of Umamaheswaran. The said telegram states that the Chief Justice of India, when consulted, is not satisfied that Koman is of requisite calibre for appointment as High Court Judge; and that among the alternatives, the Chief Justice of India suggested Sri K. Umamaheswaran, who according to his information is an able lawyer with a good practice in Madras. This is the first time that I hear about Umamaheswaran; perhaps the legal world too knows little about him. On enquiry I came to know that he is a lawyer of average ability and calibre, being one among the thousand and that he is ~~insignificant~~ not one to be counted. His name did not find a place in any of the lists recommended by the High Court for the posts of the Government Pleader and other Law Officers at any time uptill now. But his one outstanding qualification is that he is the son-in-law of Alladi Krishnaswami Ayyar, whose influence cannot but be felt in higher Judicial circles. I understand that if men of Umamaheswaran's type are thought of for the High Court Judge's post, there may perhaps be hundreds of lawyers suitable for the post. The only circumstance which seems to have been pressed into service in his favour is his being the son-in-law of Alladi.

I am at a loss to know how the talents, capacity, ability and suitability of Umamaheswaran were discovered and preferred by the Government of India, in

preference to the agreed recommendation of the Chief Justice of Madras and the Government of Madras. It is significant to note in the Government of India's telegram (of 17th October 1950) that according to the information which the Chief Justice of India received, Umamaheswaran, is an able lawyer with a good practice in Madras. Patently the sources that brought information to the Chief Justice of India about Umamaheswaran's ability, extraneous and constitutionally unrecognised sources though they are, were depended upon as more reliable sources ~~with their high influence~~, even to out-weigh the information furnished by proper and constitutionally recognised sources, namely, the Chief Justice and the Government of Madras, with regard to the suitability of persons for appointment as Judges of Madras High Court. I could understand the propriety of the choice suggested by the Government of India, had it been based on the personal knowledge of Chief Justice of India himself with regard to Umamaheswaran's worth. But to allow the hearsay information which Chief Justice of India had from certain quarters, to oust the well considered views and recommendations made by the Chief Justice as also by the Government of Madras, is surprising; and it also casts a slur on ~~the character and~~ ~~integrity of~~ the Chief Justice and the Government of Madras, who made the recommendation.

It is also painful for me to note how the Chief Justice of India allowed himself to be swayed by the extraneous sources of information in preference to the considered opinion coming through proper and constitutionally recognised sources, namely, the Chief Justice and the Government of Madras. If such important matters of public Judicial administration in Madras are made to proceed, not on the advices and recommendation by the Chief Justice and the Government of Madras, but at the direction of those unrecognised sources which have gained upper hand with the Chief Justice of India, the

constitution and the constitutional method of doing things simply become a show; and the forces administering this State would seem to be, not the Government of the State, but the individuals, whose information on matters of public administration seem to be given supreme consideration by the Government of India.

Granting that the Chief Justice of India takes a view different from the view of the Chief Justice and the Government of Madras, where is the sanction that in such circumstances the view of Chief Justice of India alone should prevail, in preference to the views of Chief Justice and the Government of Madras? Even if that be so, the acceptance of the view of the Chief Justice of India in this case, will be but a mockery, especially when the said view is not his own ~~(because he personally knows nothing about the matter)~~, but only that of his informants. The views of the Chief Justice and the Government of Madras, who are the local authorities who could be credited with greater and more intimate knowledge of men and matters in this State, and whose recommendation is therefore entitled to greater weight and consideration with the Government of India, are made subordinate to the views of those informants that supplied information to the Chief Justice of India.

If the recommendation of the Chief Justice and the Government of Madras is ignored and the views of those informants are to prevail, then why this <sup>reference</sup> ~~view~~ of Government of India inviting our views? And I should like to know where the Government of Madras stand in the field of public administration in this State when things are engineered and got done over the head of the Government of Madras, by individuals approaching the Government of India or the Chief Justice of India.

I could understand if Government of India asked us to suggest another name, if they did not accept Koman's name,

even after considering the reconsidered views of the Chief Justice and the Government of Madras. To ask us to suggest fresh names, would, if I may say so, be proper and constitutional procedure. But the procedure adopted by the Government of India is against their own instructions and is like pleading for the person whom they have already decided, as it were, to appoint as the High Court Judge. To nominate a candidate chosen, as it were, by the informants of Chief Justice of India, and then to call for the views of the Chief Justice and the Government of Madras is putting the cart before the horse. And this procedure savours more of a formality than of really calling for any assistance from the Chief Justice and the Government of Madras in arriving at a decision in the matter.

Who is this Umamaheswaran? and what is his status at the Bar? Obviously the Government of India do not themselves know about this Umamaheswaran and therefore they would seem to depend on the views of the Chief Justice of India for guidance in the matter. But patently the Chief Justice of India himself does not have any knowledge of Umamaheswaran's worth and status at the Bar, as it is clear from the Telegram of the 17th October 1950 that his opinion about Umamaheswaran is based on the information brought to him, presumably by those who enjoy positions of closeness and proximity to him. We could easily guess who those informants are, whose designs and machinations, it is that have fructified into suggesting the name of Umamaheswaran. Obviously they should be Mr. Justice Patanjali Sastri, and Justice Chandrasekara Aiyar, who being Juniors of Alladi bound by ties of loyalty to their erstwhile master, and enjoying their present positions as they do, must have designed to sabotage the recommendation of Koman's name and to shove in a person of their own choice, Sri Umamaheswaran. And Alladi Krishnaswami Aiyar, whose son-in-law is to be pushed up, should be the spring head of this new move, to



supersede the agreed recommendation of the Chief Justice and the Government of Madras. Evidently their scheme is that if Koman's name is ruled out, they can conveniently bring in Umamaheswaran. Certainly Alladi's hands and designs should also be there. Alladi Krishnaswami Aiyar, not being satisfied with the infusion into the Constitution, of his far fetched designs aiming at his group's perpetual domination in the public life and administration in Madras, which he did so cleverly while participating in the constitution-making as to defy all detection, and which he now unearths in the Courts of Law by his interpretations of the Constitution, has now perhaps set his foot on securing for his kith and kin, high jobs of privileged position and status, taking advantage of his allied forces dominating at the Centre to-day.

In the face of the following recommendation by the Chief Justice of Madras that "there are no outstanding members of the Bar, of whom he can say that they are definitely better than Koman", the selection of Umamaheswaran, a member of the Bar, is but a challenge on the bonafidis and the integrity of the Chief Justice and the Government of Madras. The designs of Alladi and his allied group should have some limit. Their intrigues and machinations should not be let loose in this Province, which is already fighting hard to save itself from their clutches.

Vacancies in the Madras High Court would be arising from time to time; for which the Chief Justice and the Government of Madras will have to make recommendations on the basis of their direct and personal knowledge of all matters germane to the suitability of persons for appointment as Judges in the Madras High Court. While making recommendation, the Government of Madras would be obliged to take into account, in addition to the judicial capacity and ability of the persons recommended, certain other factors also, like the person's high sense of responsibility for the maintenance



of stability of conditions in the State and his spirit of sympathy with the State Government's endeavours for the maintenance of social justice, peace and stability, and not with tendencies of going off at a tangent in the name of judicial independence or of taking a hostile attitude against the State Government. It may be stated that the Madras High Court with its present personnel, contains largely such hostile elements, who are prepared to sabotage the present Government of Madras unsparingly, and unswervingly. To add more to such elements will be still more dangerous.

You may remember, you have once told me that in the said respect, the Bombay Government is the worst suffering lot at the hands of the Bombay High Court, which is said to be pronouncedly hostile to that Government. When things exist like that, it is the responsibility of the State Government to see that the High Court contains personnel, with high sense of responsibility and with sense of co-operation and sympathy with the State Government. But if the State Government's recommendations, made as they are on consideration of several other factors also as stated above, besides the judicial ability and capacity of the persons recommended, are to be vetoed in the manner it is done by the Centre, and thus the designs of persons pronouncedly hostile to the present Government of Madras like Alladi and his group are allowed to work, to introduce hostile elements on the Bench of the High Court, there is absolutely no safety for the State Government.

There is already widespread feeling in Madras that persons, particularly those of the above mentioned group, get things done easily at the Centre over the head of the State Government; and this, in the eyes of the public, undisputably lowers the State Government's prestige and dignity. There are instances to bear out the validity of such feelings and opinion among the public; but it may be unnecessary to refer to them at this context. I can only

say that the choice of Umamaheswaran in rejection of our recommendation of Koman's name, comes as the latest among those instances. That Umamaheswaran himself should indulge in canvassing here (even prior to the receipt of the Government of India Telegram dated 17th October 1950 by the Government of Madras), that his name would be referred to by the Centre for the views from Madras and that he should be recommended, is something that is intolerable. It is a challenge and insult to the Government of Madras, proclaiming, as it were, how certain individuals could hold the reins of public administration in the State, to the utter disregard and <sup>the</sup> ignoring of the responsible Government of the State. I need not ~~xx~~ tell you, how tense is the atmosphere here with popular feelings against the attempts of the privileged group at securing perpetual domination in the public life and administration in Madras. It is not possible to ignore the reality of the situation and the feelings widely prevalent among the bulk of the public of this State; and the Government of Madras find it hard to stem the tide of such public feelings, especially when such feelings are borne out by specific instances of public importance, the latest of which is the choice of Umamaheswaran in rejection of our recommendation of Koman's name.

I am sorry I have troubled you with this lengthy letter. I would not have done so, but for the fact that I feel that the reactions to the Government of India's rejection of the unanimous recommendation of the Chief Justice and the Government of Madras, and the suggestion of Umamaheswaran's name, is such that I am obliged to write such a lengthy letter. And I leave the matter to you for final decision and action thereon, but only with the expression of feeling, how difficult will it be for any Government of the State to run on, facing an embarrassing situation like the one prevailing now, involving loss of State Government's prestige and dignity. And I would ask you to kindly consider whether it will be possible for any one with democratic responsibility to run the State

Government as its head, when the State Government is to face subordination to the designs of certain self-seeking individuals of this Province. I shall end this letter with the hope that you can set right the situation facing the State Government, instead of allowing it to its fate.

With best regards,

Yours sincerely,



The Hon'ble Sardar Vallabhbhai Patel,  
Deputy Prime Minister of India,  
New Delhi.