IN THE COURT OF APPEAL OF MALAYSIA

(APPELLATE JURISDICTION)

CIVIL APPEAL NO. W-01-1-2010

BETWEEN

1. **MENTERI DALAM NEGERI**
2. **KERAJAAN MALAYSIA**
3. **MAJLIS AGAMA ISLAM & ADAT MELAYU TERENGGANU**
4. **MAJLIS AGAMA ISLAM WILAYAH PERSEKUTUAN**
5. **MAJLIS AGAMA ISLAM NEGERI MELAKA**
6. **MAJLIS AGAMA ISLAM NEGERI JOHOR**
7. **MAJLIS AGAMA ISLAM NEGERI KEDAH**
8. **MALAYSIAN CHINESE MUSLIM ASSOCIATION**
9. **MAJLIS AGAMA ISLAM NEGERI SELANGOR … APPELLANTS**

AND

TITULAR ROMAN CATHOLIC ARCHBISHOP OF KUALA LUMPUR … RESPONDENT

[DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
(BAHAGIAN RAYUAN & KUASA-KUASA KHAS)

PERMOHONAN SEMAKAN KEHAKIMAN NO: R1-25-28-2009

Dalam perkara keputusan Responden-responden bertarikh 7.1.2009 yang menyatakan bahawa Permit Penerbitan Pemohon untuk tempoh

1.1.2009 hingga 31.12.2009 adalah tertakluk kepada syarat bahawa Pemohon dilarang menggunakan istilah / perkataan “Allah” dalam “Herald – The Catholic Weekly” sehingga Mahkamah memutuskan perkara tersebut

Dan

Dalam perkara Permohonan untuk Perintah Certiorari di bawah Aturan 53, Kaedah 2(1) Kaedah-kaedah Mahkamah Tinggi 1980

Dan

Dalam perkara Permohonan untuk Deklarasi di bawah / aturan 53, Kaedah 2(2) Kaedah-kaedah Mahkamah Tinggi 1980

Dan

Dalam perkara Roman Catholic Bishops (Incorporation) Act 1957

DI ANTARA

TITULAR ROMAN CATHOLIC ARCHBISHOP OF KUALA LUMPUR … PEMOHON

DAN

1. MENTERI DALAM NEGERI ... RESPONDEN PERTAMA
2. KERAJAAN MALAYSIA RESPONDEN KEDUA]

CORAM:

MOHAMED APANDI BIN ALI, JCA
ABDUL AZIZ BIN ABDUL RAHIM, JCA
MOHD ZAWAWI BIN SALLEH, JCA

GROUNDS OF JUDGMENT

1. Introduction

[1] This appeal is concerned with and only with judicial review. It is an appeal against the decision of the learned High Court Judge, on a Judicial Review application, given on 31/12/2009, where the following reliefs were granted to the respondent:-

> "(1) Satu Perintah Certiorari untuk membatalkan keputusan Responden-Responden bertarikh 7 Januari 2009 bahawa Permit Penerbitan Pemohon untuk tempoh 1 Januari 2009 sehingga 31 Disember 2009 adalah tertakluk kepada syarat bahawa Pemohon dilarang menggunakan istilah/perkataan "Allah" dalam "Herald – The Catholic Weekly" sehingga Mahkamah memutuskannya;
>
> (2) Secara bersesama, deklarasi-deklarasi berikut:
>
> (i) Bahawa keputusan Responden-Responden bertarikh 7 Januari 2009 untuk kelulusan Permit Penerbitan Pemohon untuk tempoh 1 Januari 2009 sehingga 31 Januari 2009 adalah tertakluk kepada syarat bahawa Pemohon dilarang menggunakan istilah/perkataan "Allah" dalam "Herald – The Catholic Weekly" sehingga Mahkamah memutuskannya adalah salah di sisi undang-undang, batal dan tidak sah;
>
> (ii) Bahawa berdasarkan Perkara 3(1) Perlembagaan Persekutuan, Pemohon mempunyai hak di bawah perlembagaan untuk menggunakan istilah/perkataan Allah dalam "Herald – The Catholic Weekly" dalam perlaksanaan hak Pemohon bahawa agama selain daripada Islam boleh diamalkan secara aman dan harmoni di mana-mana tempat Persekutuan;

(iii) Bahawa Perkara 3(1) Perlembagaan Persekutuan yang menyatakan bahawa Islam adalah agama Persekutuan tidak memberi kuasa dan/atau memberi autoriti kepada Responden-Responden untuk melarang penggunaan istilah/perkataan “Allah” dalam “Herald – The Catholic Weekly”;

(iv) Bahawa menurut Perkara 10 Perlembagaan Persekutuan Pemohon mempunyai hak di bawah perlembagaan untuk menggunakan istilah/perkataan “Allah” dalam “Herald – The Catholic Weekly” dalam perlaksanaan hak Pemohon untuk kebebasan bersuara dan menyatakan pendapat;

(v) Bahawa menurut Perkara 11 Perlembagaan Pesekutuan Pemohon mempunyai hak di bawah Perlembagaan untuk menggunakan istilah/perkataan “Allah” dalam “Herald – The Cathoic Weekly” dalam perlaksanaan hak Pemohon untuk kebebasan beragama yang termasuk hak untuk menguruskan hal ehwal agama sendiri;

(vi) Bahawa berdasarkan Perkara 11 dan Perkara 12 Perlembagaan Persekutuan Pemohon mempunyai hak di bawah Perlembagaan untuk menggunakan istilah/perkataan “Allah” dalam “Herald – The Catholic Weekly” dalam perlaksanaan hak Pemohon berkenaan dengan pengajaran dan pendidikan umat Katolik dalam agama Kristian.”

The English translation of the above orders read as follows:-

“(1) an Order of Certiorari to quash the decision of the Respondents dated 7.1.2009 that the Applicant’s Publication Permit for the period 1.1.2009 until 31.12.2009 is subject to the condition that the Applicant is prohibited from using the

word “Allah” in “Herald - The Catholic Weekly” pending the Court’s determination of the matter;

(2) Jointly the following declarations:

(i) that the decision of the Respondents dated 7.1.2009 that the Applicant’s Publication Permit for the period 1.1.2009 until 31.12.2009 is subject to the condition that the Applicant is prohibited from using the word “Allah” in Herald - The Catholic Weekly” pending the Court’s determination of the matter is illegal and null and void;

(ii) that pursuant to Article 3(1) of the Federal Constitution the Applicant has the constitutional right to use the word “Allah” in “Herald - The Catholic Weekly” in the exercise of the Applicant’s right that religions other than Islam may be practiced in peace and harmony in any part of the Federation;

(iii) that Article 3(1) of the Federal Constitution which states that Islam is the religion of the Federation does not empower and/or authorize the Respondents to prohibit the Applicant from using the word “Allah” in Herald - The Catholic Weekly;

(iv) that pursuant to Article 10 of the Federal Constitution the Applicant has the constitutional right to use the word “Allah” in “Herald - The Catholic Weekly” in the exercise of the applicant’s right to freedom of speech and expression”;

(v) that pursuant to Article 11 of the Federal Constitution the Applicant has the constitutional right to use the word “Allah” in Herald - The Catholic Weekly” in the exercise of the Applicant’s freedom of religion which includes the right to manage its own religious affairs;

(vi) that pursuant to Article 11 and Article 12 of the Federal Constitution the Applicant has the constitutional right to use the word "Allah" in "Herald - The Catholic Weekly" in the exercise of the Applicant's right in respect of instruction and education of the Catholic congregation in the Christian religion.

[2] My learned brothers, Abdul Aziz bin Abdul Rahim, JCA and Mohd. Zawawi bin Salleh, JCA have read and approved this judgment. In addition, both of my learned brothers have respectively written separate supporting judgments. I agree with their methodological analysis and findings.

[3] I have read the appeal records and all the submissions and had given full consideration of the various views by the trial Judge and that of all the parties. It is my considered opinion that not all the issues raised in their respective views are relevant for purposes of this appeal. In this judgment, I shall place emphasis only on issues that in my view, have had bearings in deciding this appeal.

[4] As indicated above this is a judicial review case. I am therefore guided by trite law that a judicial review is not concerned with the merits of any administrative decision but rather with the **manner** the decision was made. A judicial review is not to be treated as an appeal. Corollary to that, the court can quash an administrative decision without substituting for its own. In short, the court is not performing an appellate function. On this trite law, it will

be suffice to refer to the celebrated case of ***Associated Provincial Picture Houses v Wednesbury Corp*** **[1948] 1 KB 223**, where Lord Greene MR, summed up as follows:-

> "The power of the court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority have contravened the law by acting in excess of the powers which Parliament has confided in them."

[5] The above ***Wednesbury*** case was cited with approval, and followed by our Supreme Court case ***Minister of Labour, Malaysia v Lie Seng Fatt*** **[1990] 2 MLJ 9.**

Facts of the case

[6] The 1st appellant in a letter dated 7/1/2009 addressed to the respondent approved the respondent's publication permit subject to the following conditions:-

> "(i) Permohonan penerbitan dalam Bahasa Melayu adalah dibenarkan, namun demikian, **penggunaan kalimah "ALLAH"** adalah dilarang sehingga mahkamah membuat keputusan mengenai perkara tersebut.
>
> (ii) Di dalam hadapan penerbitan ini, tertera perkataan "TERHAD" yang membawa maksud penerbitan ini adalah terhad untuk edaran di gereja dan kepada penganut Kristian sahaja. ("the said decision")."

[7] The respondent being dissatisfied with the said decision filed an Application for Judicial Review No: R1-25-28-2009 in the Kuala Lumpur High Court to quash the said decision.

[8] There is a long history as to how the letter issued by the 1st appellant (dated 7/1/2009) came about. The facts leading to or culminating in the letter of 7/1/2009 can be gleaned from the various earlier letters issued by the 1st appellant to the respondent, which are found as exhibits in their respective affidavits. The relevant letters in their chronological order are as follows:-

No.	Type of document	Dated	In the Record of Appeal
1.	Directive by Ministry prohibiting the usage of the words: "Allah", "Kaabah", "Solat" and "Baitullah" in all publications of other religion, besides Islam.	5/12/1986	Page 478 Vol. 4
2.	First admonition letter to the respondent for failure to comply with the directive dated 5/12/1986	27/5/1998	Page 284 Vol. 3
3.	First show-cause letter to the respondent for failure to abide with the admonition letter dated 27/5/1998.	17/7/2002	Page 292 Vol. 3
4.	Second admonition letter to the	11/10/2006	Page 303 Vol. 3

	respondent		
5.	Third admonition letter to the respondent	17/1/2007	Page 308 Vol. 3
6.	Forth admonition letter to the respondent	5/2/2007	Page 317 Vol. 3
7.	Second show-cause letter to the respondent	12/3/2007	Page 322 Vol. 3
8.	Prohibition Notice letter from the Ministry, with lengthy explanation as to the reasons why and how the matter had affected the peace and harmony in the country	24/4/2007	Page 330 Vol. 3
9.	Fifth admonition letter to the respondent	13/9/2007	Page 336 Vol. 3
10.	Approval of publication permit, with 3 conditions.	30/12/2008	Page 428 Vol. 3
11.	Letter in reply to respondent's complaint of the condition of the permit (as stated in document 10 above), whereby the 3 were watered down but the prohibition of the usage the name of "Allah" was still prohibited. This letter is the subject-matter of the judicial review application.	7/1/2009	Page 439 Vol. 3

[9] It is pertinent to note that the reason for the prohibition of the usage of the word "Allah" in the respondent's publication has been brought to the attention and knowledge of the respondent since the date of the issuance of the first letter (item 1 in the list above) on **5/12/1986**. The stand taken by the 1st appellant on the subject matter has always been consistent. In fact, it can be seen that the contents of the letters dated 27/5/1998, 11/10/2006, 17/1/2007, 5/2/2007 and 12/3/2007 (items: 2, 4, 5, 6 and 7 in the list above) are similar. The similar contents read as follows:-

> "Dimaklumkan bahawa Kerajaan sentiasa menjamin kebebasan beragama di Negara ini sepertimana termaktub di bawah Perkara 11 Perlembagaan Persekutuan. Namun demikian, pihak Kerajaan adalah **bertanggungjawab untuk mengelakkan sebarang kekeliruan** di kalangan masyarakat pelbagai agama yang mana sekiranya dibiarkan ianya **boleh mengancam keselamatan dan ketenteraman awam**. **Sensitiviti keagamaan amat perlu dihormati dan dipelihara oleh semua pihak**. Sebagai sebuah institusi agama yang mempunyai ramai penganut dari kalangan rakyat Malaysia berbilang kaum, pihak tuan juga mempunyai tanggungjawab yang serupa menjana keharmonian beragama masyarakat Malaysia."

[10] To fully appreciate the facts of the case, it is instructive for me to refer to the contents of the letter dated 24/4/2007 (item 8 in the list above) which contained extensive explanations of the Ministry's decision on the matter. As the letter is self-explanatory, it is proper to reproduce in toto the said letter, which reads as follows:-

“

Ruj. Kami: KKDN:PQ:1505 (8460)

Tarikh : 24 April 2007

Archbishop Murphy Pakiam
Titular Roman Katolik Archibshop Of Kuala Lumpur
Herald, Xavier Hall
Jalan Gasing
46 Petaling Jaya, Selangor

Tuan,

NOTIS LARANGAN PENGGUNAAN PERKATAAN ALLAH DALAM BAHAN PENERBITAN/CETAK BERTAJUK *HERALD – THE CATHOLIC WEEKLY*

Dengan hormatnya saya diarah merujuk kepada surat tuan bertarikh 27 Mac 2007 mengenai perkara di atas.

2. Kementerian telah meneliti surat tuan berkenaan dan mendapati ianya telah membangkitkan beberapa perkara mengenai Artikel 11(3) Perlembagaan Negara, surat Setiausaha Sulit Kanan, rujukan MDN/08(8) bertarikh 20 Ogos 2002 dan kenyataan YAB Perdana Menteri mengenai ‘Bible’ pada 19 April 2005. Memandangkan pihak tuan telah menyentuh perkara-perkara tersebut, pihak Kementerian ingin memberi penjelasan agar ianya dapat mengatasi kekeliruan mengenai perkara ini.

3. Perkara 3(1), Perlembagaan Persekutuan, ada menyebut bahawa *Agama Islam* adalah agama rasmi Persekutuan. Sungguhpun demikian, agama lain boleh diamalkan dengan aman dan damai di mana-mana bahagian Persekutuan. Selanjutnya Perkara 11 (1)(3)(a) Perlembagaan Persekutuan menyebut, setiap orang berhak menganuti dan mengamalkan agamanya dan, **tertakluk kepada Fasal (4)**, mengembangkannya, di samping

berhak menguruskan hal ehwal agamanya sendiri. Fasal 4, Perkara 11, Perlembagaan Persekutuan tersebut ialah:-

> *"Undang-undang Negeri, dan berkenaan dengan Wilayah-Wilayah Persekutuan Kuala Lumpur, Wilayah Persekutuan Labuan dan Putrajaya, undang-undang Persekutuan boleh mengawal atau menyekat pengembangan apa-apa doktrin atau kepercayaan agama di kalangan orang yang menganuti agama Islam";*

4. Berikutan itu, Negeri-negeri mewujudkan undang-undang / enakmen negeri masing-masing bagi mengawal pengembangan agama di kalangan orang Islam dengan masing-masing meluluskan perkataan / istilah agama Islam yang dilarang digunakan di dalam bahan penerbitan agama lain selain daripada agama Islam.

5. Memandangkan wujudnya perbezaan perkataan dan jumlah perkataan di antara undang-undang negeri, ianya telah menimbulkan kekeliruan di kalangan masyarakat tentang istilah / perkataan yang boleh dan tidak boleh juga digunakan dalam penerbitan agama lain khususnya apabila banyak bahan-bahan penerbitan agama Kristian dalam Bahasa Indonesia dibawa masuk ke Malaysia. Pada akhir tahun 1970an dan awal 1980an wujud kegelisahan masyarakat dan juga masalah penguatkuasaan di kalangan pegawai-pegawai agama di negeri-negeri memandangkan terdapat penerbitan yang sama dibenarkan di negeri tententu tetapi tidak dibenarkan di negeri yang lain.

6. Berikutan itu, isu ini telah menjadi begitu sensitif dan ia telah dikategorikan sebagai isu keselamatan. Kerajaan berikutnya membuat keputusan isu ini ditangani oleh Kementerian

Keselamatan Dalam Negeri yang mengawal selia bahan penerbitan yang tak diingini berdasarkan seksyen 7(1) Akta Mesin Cetak Dan Penerbitan 1984 yang antara lain menyebut:-

> "Jika Menteri berpuas hati bahawa apa hasil penerbitan mengandungi apa-apa tulisan yang mungkin memudaratkan keselamatan atau berlawanan dengan mana-mana undang-undang, dia boleh menurut budi bicara mutlaknya melalui perintah yang disiarkan dalam Warta melarang pencetakan, pengimportan, penerbitan, penjualan, pengedaran atau pemilikan penerbitan yang berkenaan".

7. Justeru itu pada 2 Disember 1981 Kerajaan telah mewartakan larangan terhadap Al-Kitab di Malaysia melalui Warta Kerajaan P.U.(A) 15/82 di bawah Seksyen 22 Akta Keselamatan Dalam Negeri. Setelah mengambil kira rayuan badan-badan agama Kristian ketika itu, Kerajaan telah memberikan **pengecualian khas** melalui *Warta* Kerajaan P.U.(A) 134 bertarikh 13 Mei 1982 bahawa pemilikan penerbitan atau penggunaan Al-Kitab adalah hanya dibenarkan di dalam gereja oleh orang-orang yang beragama Kristian di seluruh Malaysia.

8. Dalam pada itu, perbezaan perkataan dan jumlah perkataan di dalam undang-undang negeri terus menimbulkan kekeliruan dan kegelisahan di kalangan masyarakat apabila pelaksanaan tindakan penguatkuasaan terhadap penggunaan istilah / perkataan di dalam penerbitan agama lain tidak dijalankan secara berkesan. Sehubungan itu, Kerajaan telah membuat keputusan pada 19 Mei 1986 bahawa daripada keseluruhan 16 perkataan larangan, menetapkan empat perkataan itu ***Allah, Kaabah, Solat*** dan ***Baitullah*** adalah merupakan istilah / perkataan khusus agama

Islam yang tidak boleh diguna pakai dalam bahan penerbitan agama lain kecuali bagi menerangkan konsep-konsep berkaitan dengan agama Islam. Berikutan itu Kementerian telah mengeluarkan surat pemberitahuan keputusan Bil KKDN.S.59/3/6/A Klt.2 bertarikh 5 Disember 1986 kepada penerbit-penerbit agama Kristian bagi mematuhi keputusan ini.

9. Mengenai surat balasan daripada Setiausaha Sulit Kanan Kepada YAB Menteri Dalam Negeri bertarikh 20 Ogos 2002, ia adalah merupakan surat makluman secara bertulis kepada pihak tuan, bahawa beliau telah memanjangkan permohonan pihak tuan tersebut kepada Bahagian tertentu di dalam Kementerian ini. Oleh itu anggapan tuan bahawa ia merupakan suatu keputusan adalah tidak betul dan berikutan itu, alasan tuan untuk terus menggunakan perkataan ALLAH dalam penerbitan *HERALD – THE CATHOLIC WEEKLY* juga tidak betul.

10. Mengenai kenyataan YAB Perdana Menteri dan Menteri Keselamatan Dalam Negeri pada 19 April 2005, bahawa kitab *Bible* dalam bahasa Melayu TIADA masalah di negara ini ialah tertakluk kepada syarat yang dinyatakan dengan jelas di muka hadapan penerbitan berkenaan dengan perkataan **BUKAN UNTUK ORANG ISLAM** dan *Bible* berbahasa Melayu tersebut dijual di premis-premis agama Kristian sahaja.

11. Kesimpulannya, Kerajaan telah memutuskan penggunaan istilah atau perkataan Allah, Kaabah, Baitullah dan Solat hanya khusus untuk digunakan di dalam mana-mana bahan penerbitan / cetak berkaitan agama Islam dan tidak boleh digunakan di dalam penerbitan agama lain.

12. Walau bagaimanapun, pihak Kerajaan juga membenarkan penerbitan bertajuk *Al-Kitab* berbahasa Melayu digunakan oleh semua penganut agama Kristian di negara ini di dalam gereja-gereja sahaja dan TIDAK di tempat-tempat lain. Kebenaran ini tidak meliputi lain-lain penerbitan agama Kristian selain daripada Bible berbahasa Melayu iaitu *Al-Kitab*.

13. Kerajaan sentiasa mengamalkan kebebasan beragama seperti mana termaktub di bawah Perlembagaan Persekutuan. Namun, Kerajaan bertanggungjawab untuk mengelakkan sebarang kekeliruan di kalangan masyarakat pelbagai agama yang mana sekiranya dibiarkan ia akan mengancam keselamatan dan ketenteraman awam. Sensitiviti keagamaan amat perlu dihormati dan dipelihara oleh semua pihak. Sebagai sebuah institusi agama yang mempunyai ramai penganut dari kalangan rakyat Malaysia berbilang kaum, pihak tuan juga mempunyai tanggungjawab yang serupa dalam menjaga keharmonian beragama masyarakat Malaysia.

14. Melalui penjelasan ini, adalah diharapkan agar pihak tuan dapat memahami isu larangan penggunaan empat perkataan khusus ini dan tidak lagi mengulangi kesalahan seumpama ini pada keluaran penerbitan tuan yang akan datang. Pihak tuan sebagai Pemegang Permit diingatkan kepada Syarat no. 11, *Syarat-Syarat Permit Penerbitan* yang dinyatakan di halaman belakang *Sijil Permit Penerbitan* iaitu pemegang permit hendaklah mematuhi dan tidak melanggar apa-apa arahan yang dikeluarkan di masa ke semasa oleh Kementerian. Kegagalan pihak tuan untuk mematuhi arahan ini akan mengakibatkan tindakan tegas iaitu sama ada digantung permit penerbitan atau pembatalan permit akan diambil terhadap penerbitan tuan tanpa diberi sebarang notis lagi.

15. Sila akui penerimaan surat ini dalam tempoh 14 hari daripada tarikh surat ini dikeluarkan di dalam akuan penerimaan seperti di lampiran.

Sekian, dimaklumkan.

"BERKHIDMAT UNTUK NEGARA"

Saya yang menurut perintah,

t.t.

(CHE DIN BIN YUSOH)
B.p. Ketua Setiausaha

Kementerian Keselamatan Dalam Negeri

Salinan kepada :

i. Ketua Setiausaha

ii Timbalan Ketua Setiausaha (Keselamatan)"

[11] The fact that the essence of the above explanations were given to the respondent, over the years, can be seen in the last paragraph of the fifth admonition letter dated 13/9/2007, (item 9 in the above list), which reads as follows:-

"3. Kementerian telah **berkali-kali memberi peringatan** kepada tuan supaya sentiasa mematuhi Syarat No. 11 Syarat-Syarat Permit Penerbitan yang menghendaki penerbit mematuhi dan tidak melanggar apa-apa arahan yang dikeluarkan dari masa ke semasa oleh Kementerian. Oleh yang demikian, dengan ini pihak tuan hendaklah **memberhentikan penggunaan perkataan 'Allah'** di dalam penerbitan **"Herald – The Catholic Weekly"**.

Sila akui penerimaan surat ini melalui **Akuan Penerimaan** seperti di lampiran." *(emphasis added)*

3. The relevant laws

[12] The impugned decision that formed the *bone* of contention in the judicial review application was made pursuant to the granting of the permit to publish by the Minister. The relevant law is the **Printing Presses and Publications Act 1984 [Act 301]**. This relevant law is prior to the amendments made to the Act vide amendment **Act A1436**, which came into force on 15/7/2012.

[13] **Section 6** of the **Act 301** reads as follows:-

"**6. Grant of permit.**

(1) The Minister may in his absolute discretion grant -

(a) to any person a permit to print and publish a newspaper in Malaysia; or

(b) to any proprietor of any newspaper in Singapore a permit allowing such newspaper to be imported, sold, circulated or distributed in Malaysia.

(2) The Minister may at any time revoke or suspend a permit for any period he considers desirable.

(3) The Minister may impose as a condition of the grant of a permit that the proprietor of the newspaper in Singapore shall establish and maintain a place of business within Malaysia or

shall appoint persons within Malaysia authorised to accept service of any notice or legal process on behalf of the proprietor and shall furnish the Minister with, and cause to be published in such manner as the Minister may direct, a list containing the names and addresses of such persons.".

[14] Pursuant to the powers conferred by **Section 26(2)(d) of the Act,** the Minister specified the conditions of the permit by way of a subsidiary legislation, **P.U.(A) 305/1984** and known as **Printing Presses And Publications (Licences And Permits) Rules, 1984**. The conditions of permit, as found in Form B in the First Schedule of the above-said Rules, reads as follows:-

"*CONDITIONS OF PERMIT*

1. The permit number shall be printed immediately below the title of the newspaper.

2. Eight copies of every issue and edition of the newspaper shall be delivered to the Ministry of Home Affairs immediately after it is printed.

3. The major part of the contents of the newspaper shall be limited to the affairs of Malaysia.

4. The format of the newspaper shall comply with the sample/mockup that has been submitted together with the application for this permit.

5. The scope and contents of the newspaper shall be restricted to those specified in this permit.

6. **The newspaper shall not publish any material, photograph, article or other matter which is prejudicial to or is likely to be prejudicial to public order, morality, security, the relationship with any foreign country or government, or which is likely to be contrary to any law or is otherwise prejudicial to or is likely to be prejudicial to the public interest or the national interest.**

7. The newspaper shall not in any manner misrepresent facts relating to incidents of public order and security occurring in Malaysia.

8. The permit shall not in any manner be transferred, assigned or otherwise placed under the control of any person other than the permit holder without the prior permission of the Minister of Home Affairs.

9. (i) Where the permit holder is a partnership, the partners shall not be changed without the prior consent of the Minister.

   (ii) Where the permit holder is a company, no directors shall be changed without the prior consent of the Minister.

10. The permit holder shall notify the Minister of Home Affairs of any change of members of the Editorial Board or any change in the shareholding of the company which affects the power to direct the management and policy of the company.

11. **The permit holder is required to comply with and not to contravene any directive from time to time issued by the Minister of Home Affairs.**

12. The conditions of this permit may be amended at any time by notification in writing by the Minister of Home Affairs to the permit holder.".

[15] Besides the provisions of the **Act**, the relevant laws pertaining to this appeal are **Article 3** in **Part *I* of the Federal Constitution and the Fundamental Liberties Articles** in **Part *II* of the Constitution**. I shall deal specifically with the respective Articles in the course of my judgment.

4. Issues to be determined

[16] Upon perusal of the appeal records and the submissions filed herein, I conclude that the central issue in this appeal is whether the imposition of the conditions of the publication permit, to the effect that the usage of the word "Allah" is prohibited in the Malay version of the publication of the "Herald – The Catholic Weekly" ("the Herald"), was in accordance with law or otherwise.

[17] To recapitulate, the impugned conditions as contained in para 2 of the letter dated 7/1/2009 (at page 439 of the Appeal Records Vol. 3) reads as follows:-

"2. Untuk makluman pihak tuan, Bahagian ini telah membuat pertimbangan semula ke atas kelulusan permohonan permit penerbitan bai penerbitan dengan tajuk di atas dan keputusannya adalah seperti berikut:

(i) Permohonan penerbitan dalam Bahasa Melayu adalah dibenarkan, namun demikian, **penggunaan kalimah "ALLAH" adalah dilarang** sehingga mahkamah membuat keputusan mengenai perkara tersebut.

(ii) Di halaman hadapan penerbitan ini, tertera perkataan **"TERHAD"** yang membawa maksud penerbitan ini adalah terhad untuk edaran di gereja dan kepada penganut Kristian sahaja.".

[18] The respondent has no quarrel with the 2nd condition in sub-para 2(ii) above.

5. Grounds of Appeal

[19] The 1st and 2nd appellants that represent the public authority (or the administrative authority) that made the impugned decision, submitted 3 main grounds in support of their appeal:-

(i) that the Minister had acted within his ministerial function and powers and in accordance with the **Printing Presses and Publications Act 1984**;

(ii) that the prohibition of the usage of the word "Allah" is in the interest of public safety and public order; and

(ii) that the said decision was legal and reasonable.

[20] The other appellants adopted the submissions of the learned Senior Federal Counsel, counsel for the 1st and 2nd appellants but emphasized on the need to protect Islam as the religion of Malaysia *vis-à-vis* the provisions of **Article 3(1)** and **Article 11(4) of the Federal Constitution**.

6. My analysis

[21] Upon reading the records of appeal and giving due weight to the respective submissions, my analysis of the legal issues in this appeal are as follows.

[22] The power to impose conditions in a permit under the **Printing Presses and Publications Act** by the Minister is not in dispute. The law gave him such power and even if it is not so provided, the law gave him such implied powers. This is as provided for under **Section 40 of the Interpretation Acts, 1948** and **1967**, which reads as follows:-

> "**Implied power**
>
> **40.** (1) Where a written law confers a power on any person to do or enforce the doing of any act or thing, all such powers shall be understood to be also given as are reasonably necessary to enable the person to do or enforce the doing of the act or thing.
>
> (2) Without prejudice to the generality of subsection (1) –

(a) power to make subsidiary legislation to control or regulate any matter includes power to provide for the same by licensing and power to prohibit acts whereby the control or regulation might be evaded;

(b) power to grant a licence, permit, authority, approval or exemption includes power to impose conditions subject to which the licence, permit, authority, approval or exemption is granted; and

(c) where a power is conferred on any person to direct, order or require any act or thing to be done, there shall be deemed to be imposed on any person to whom a direction, order or requisition is given in pursuance of the power a duty to comply therewith.".

[23] Imposition of a condition in a licence or permit is an exercise of the discretion of the Minister. Such discretion must not be unfettered or arbitrary. Such exercise of discretion must be reasonable. What is reasonable depends on the facts and circumstances of the case. What is a justifiable circumstances depends on the necessity of the occasion. This concept of fairness, i.e., as a safe-guard against unfettered discretion, is embodied in the provisions of **section 93(1)** and **section 95 of the Interpretation Acts**. **Section 93(1)** provides as follows:-

"**Construction of provisions as to exercise of powers and duties**

93. (1) Where a written law confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires.

(2) Where a written law confers a power or imposes a duty on the holder of an office as such, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder of the office for the time being or by a person duly appointed to act for him.".

[24] In empathy of the above, **section 95 of the Interpretation Acts** reads as follows:-

"**95.** (1) Where a written law confers power on any person to do or enforce the doing of any act or thing, all such powers shall be understood to be also conferred as are reasonably necessary to enable the person to do or enforce the doing of the act or thing.

(2) Without prejudice to the generality of the foregoing –

(a) power to control or to regulate any matter includes power to provide for the same by the licensing thereof and power to prohibit acts whereby the control or regulation might be evaded;

(b) power to grant a licence, permit, authority, approval or exemption includes power to impose conditions subject to which the licence, permit, authority, approval or exemption is granted.".

[25] The only issue before me is whether the exercise of the discretionary power to impose the impugned condition was in accordance to law.

[26] To appraise as to whether such a condition was in accordance to law, it needs to be analysed whether it was *ultra vires* the Act and/or in contravention of the fundamental liberties of the respondent, under the **Federal Constitution**.

[27] From the reading of the specific provisions of the **Printing Presses and Publications Act 1984** and the Rules made thereunder, it is my judgment that, read with the provisions of s**ection 93(1)** and **section 95** of the **Interpretations Acts 1948 and 1967**, the decision to impose the condition in the permit is well within the law. In short, the decision is within the function and statutory powers of the Minister. It is *intra vires* the **Printing Presses and Publications Act 1984**.

[28] On the issue of the exercise of discretion in imposing the condition of prohibiting the usage of the word 'Allah' by the respondent in the Malay versions of the Herald, I could not agree more than what was decided by this court in ***Arumugam a/l Kalimuthu v. Menteri Keselamatan Dalam Negeri & Ors*** **[2013] 5 MLJ 174, [2013] 4 AMR 289.**

[29] That case dealt with issues of irrationality and illegality. It was held in ***Arumugam's*** case that the issue of irrationality is intertwined

with the discretionary power of the Minister. And it dwelt with the objective balancing of the statutory and constitutional framework and the sensitivities of the community. Without repeating the principles discussed and decided therein, it is pertinent to state the appraisal of the facts by the Minister in the appeal before us has been correctly done, namely by way of it being **subjectively objective**. This is in line with the rationale in the Federal Court decision in ***Darma Suria Risman v. Menteri Dalam Negeri & 3 Ors*** **[2010] 1 CLJ 300**. That brings the matter to the related constitutional issues pertaining to this appeal.

7. Constitutional issues

[30] It is my judgment that the fundamental liberties of the respondent in this case, has to be read with **Article 3(1) of the Federal Constitution**. **Article 3(1)** reads as follows:-

> "3. (1) Islam is the religion of the Federation; but other religions may be practiced **in peace and harmony** in any part of the Federation.
>
> (2) In every State other than States not having a Ruler the position of the Ruler as the Head of the religion of Islam in his State in the manner and to the extent acknowledged and declared by the constitution of that State, and, subject to that Constitution, all rights, privileges, prerogatives and powers enjoyed by him as Head of that religion, are unaffected and unimpaired; but in any acts, observances of ceremonies with respect to which the Conference of Rulers has agreed that they should extend to the Federation as a whole each of the other Rulers shall in his

capacity of Head of the religion of Islam authorize the Yang di-Pertuan Agong to represent him.

(3) The Constitution of the States of Malacca, Penang, Sabah and Sarawak shall each make provision for conferring on the Yang di-Pertuan Agong the position of Head of the religion of Islam in that State.

(4) Nothing in this Article derogates from any other provision of this Constitution.

(5) Notwithstanding anything in this Constitution the Yang di-Pertuan Agong shall be the head of the religion of Islam in the Federal Territories of Kuala Lumpur, Labuan and Putrajaya; and for this purpose Parliament may be law make provisions for regulating Islamic religious affairs and for constituting a Council to advise the Yang di-Pertuan Agong in matters relating to the religion of Islam.".

[31] It is my observation that the words "**in peace and harmony**" in **Article 3(1)** has a historical background and dimension, to the effect that those words are not without significance. The Article places the religion of Islam at par with the other basic structures of the Constitution, as it is the 3rd in the order of precedence of the Articles that were within the confines of **Part *I* of the Constitution**. It is pertinent to note that the fundamental liberties Articles were grouped together subsequently under **Part *II* of the Constitution**.

[32] **Article 3(1)** has a chequered history. Originally it was not in the draft proposed by the Reid Commission. As unfolded in the pages of history, the insertion of **Article 3(1)** came about after objections, negotiations, discussions and consensus between all the stake-holders, including from various racial and religious groups. It came about by the **White Paper** known as the Federation of Malaya Constitutional Proposals 1957. Paragraphs 57 and 58 of the **White Paper** reads as follows:-

> "57. There has been included in the proposed Federal Constitution a declaration that Islam is the religion of the Federation. This will in no way affect the present position of the Federation as a secular State, and every person will have the right to profess and practice his own religion and the right to propagate his religion, though this last right is subject to any restrictions imposed by State law relating to the propagation of any religious doctrine or belief among persons professing the Muslim religion.
>
> 58. The position of each of Their Highnesses as head of the religion in his State and the rights, privileges, prerogatives and powers enjoyed by him as head of that religion will be [19] unaffected and unimpaired. Their Highnesses have agreed however to authorize the Yang di-Pertuan Agong to represent them in any acts, observances or ceremonies agreed by the Conference of Rulers as extending to the Federation as a whole.".

[33] In short, **Article 3(1)** was a by-product of the **social contract** entered into by our founding fathers who collectively produced the **Federal Constitution**, which is recognized as the Supreme Law of the country. It is my judgment that the purpose and intention of the

insertion of the words: "**in peace and harmony**" in **Article 3(1)** is to protect the sanctity of Islam as the religion of the country and also to insulate against any threat faced or any possible and probable threat to the religion of Islam. It is also my judgment that the most possible and probable threat to Islam, in the context of this country, is the propagation of other religion to the followers of Islam. That is the very reason as to why **Article 11(4) of the Federal Constitution** came into place.

[34] Pursuant to the empowering provisions of **section 57(2) of the Evidence Act 1950**, in the course of writing this judgment, I have resorted aid to appropriate books of reference. On this point, perhaps it is appropriate to quote Professor Andrew Harding in his book **"Law, Government and the Constitution in Malaysia"** published in 1996, at page 201, who wrote as follows:-

> "The relationship between Islam and the Constitution has been discussed in Chapter 8 as one of the important general features of the Constitution. It emerged from that discussion that freedom of religion is both of importance in itself in a multi-religious society such as Malaysia, and that this principle is in no way contrary to the principle that Islam is the religion of the Federation. It is therefore to be expected that freedom of religion is specifically safeguarded in the Constitution.
>
> Art. 11(1) says that '[e]very person has the right to profess and practice his religion and, subject to Clause (4), to propagate it.' Art. 11(4) allows the States to legislate for the control or restriction of the propagation of any religious doctrine among

persons professing Islam. Thus Art. 11, while safeguarding freedom of religion, draws a distinction between *practice* and *propagation* of religion. The States have in fact exercised their right to enact restrictive laws such as are envisaged by Art. 11(4); and since the States include Penang and Melaka, where Islam is not even the state religion, it seems that the restriction of proselytism has more to do with the preservation of public order than with religious priority.".

[35] On **Article 11(4)**, Professor Dr. Shad Saleem Faruqi in his book entitled **"Document of Destiny the Constitution of the Federation of Malaysia"**, published in 2008, at pages 138-139, wrote:-

"**Propagation of religion to Muslims:** Under Article 11(4) of the Federal Constitution, non-Muslim may be forbidden by State law from preaching their religion to Muslim. Many Muslims complain that this part of the "social contract" is not being observed by some evangelical groups, some of whom are from abroad. On many occasions in recent years news has spread like wild fire that thousands of Muslims have converted or are waiting to convert to Christianity. Invariably this raises tensions.

In turn, many non-Muslims complain that Article 11(4) amounts to unequal treatment under the law because Muslims are allowed to propagate their religion to non-Muslims. It is respectfully submitted that Article 11(4) is part of the pre-Merdeka "social contract". It's aim is to insulate Muslims against a clearly unequal and disadvantageous situation. During the colonial era, many non-indigenous religions were vigorously promoted by the merchants, the military and the missionaries of the colonial

countries. Even today, the proselytizing activities of many Western-dominated religious movements that are internationally organised and funded have aroused resentment in many Asian and African societies. Some aspects of their activities, like seeking deathbed conversions, generous grant of funds to potential converts and vigorous proselytising activities among minors have distinct implications for social harmony. Prof. Harding is of the view that Article 11(4) was inserted because of public order considerations. According to him the restriction on proselytism has more to do with the preservation of public order than with religious priority. To his view, one may add that Malays see an inseparable connection between their race and their religion. Any attempt to weaken a Malay's religious faith may be perceived as an indirect attempt to erode Malay power. Conversion out of Islam would automatically mean deserting the Malay community due to the legal fact that the definition of a 'Malay' in Article 160(2) of the Federal constitution contains four ingredients. Professing the religion of Islam is one of them. A Pre-Merdeka compromise between the Malays and the non-Malays was, therefore, sought and obtained that any preaching to Muslims will be conducted only by authorised Syariah authorities. Missionary work amongst Muslims – whether by non-Muslims or Muslims – may be regulated by state law under the authority of Article 11(4) of the Federal Constitution.".

[36] The alleged infringement of the fundamental liberties of the respondent can be negated by trite law that any freedom is not absolute. Freedom cannot be unfettered, otherwise like absolute power, it can lead to chaos and anarchy. Freedom of speech and expression under **Article 10(1)** are subjected to restrictions imposed

by law under **Article 10(2)(a).** Freedom of religion, under **Article 11(1)**, as explained above is subjected to **Article 11(4)** and is **to be read** with **Article 3(1**).

8. Exercise of discretion

[37] As stated at the beginning of the judgment in a judicial review case, all the reviewing court need to deliberate and consider is the manner as to **how** the deciding authority made the decision. Was it made in an arbitrary manner without considering any relevant fact?

[38] On the facts of this case, perhaps it is appropriate to refer what the Minister had affirmed in his Affidavit In Reply to indicate as to how he came about to make the decision to impose the impugned condition on the Herald. The explanations and reasons given for imposing such condition can be seen in paragraphs 9.4, 11, 23 and 46 of the Affidavit In Reply (can be seen from pages 261 to 297 of the Appeal Records, Vol. 2). It is suffice to quote what was said in para 46 of the said Affidavit In Reply, which reads as follows:-

> "46. Saya selanjutnya menyatakan bahawa penggunaan kalimah Allah yang berterusan oleh Pemohon boleh mengancam keselamatan dan ketenteraman awam kerana ia boleh membangkitkan kekeliruan di kalangan umat Islam. Ini adalah kerana walaupun Pemohon mendakwa kalimah Allah yang digunakan di dalam penerbitannya merupakan terjemahan perkataan "God" tetapi di kalangan rakyat Malaysia, kalimah "Allah" secara matannya merujuk kepada Tuan Yang Maha Esa bagi penganut agama Islam.".

[39] It may be recalled that earlier in this judgment I reproduced the full text of the Ministry's letter dated 24/4/2007. It must be observed that at paragraph 5 of the said letter the respondent was informed of the unrest and ill feeling within the community that may lead to a disruption of the even tempo of the community.

[40] "Potential disruption of the even tempo of the community" is a basis to restrict the fundamental liberties of freedom of expression and freedom to practice one's religion. It is so when any particular activity comes within the scope of being prejudicial to public order. The concept of "potentiality to disturb the even tempo of the community" emerged in India: ***Kishori Mohan Bera v. The State of West Bengal*** **[1972 (3) SCC 845]**, which *inter alia* held that:-

> **"**`Public Order', 'law and order' and the 'security of the State' fictionally draw three concentric circles, the largest representing law and order, the next representing public order and the smallest representing security of the State. Every infraction of law must necessarily affect order, but an act affecting law and order may not necessarily also affect the public order. Likewise, an act may affect public order, but not necessarily the security of the State. The true test is not the kind, but the potentiality of the act in question. One act may affect only individuals while the other, though of a similar kind, may have such an impact that it would disturb the even tempo of the life of the community. This does not mean that there can be no overlapping, in the sense that an act cannot fall under two concepts at the same time. An act, for

instance, affecting public order may have an impact that it would affect both public order and the security of the State.".

[41] This concept was later adopted by the Indian Supreme Court in the case of ***Collector and District Magistrate v. S Sultan*** **AIR [2008] SC 2096**, where Dr Arjit Pasayat J. wrote as follows:-

> "The crucial issue, therefore, is whether the activities of the detune were prejudicial to public order. While the expression 'law and order' is wider in scope in as much as contravention of law always affects order. 'Public order' has a narrower ambit, and public order could be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of 'law and order' and 'public order' is one of the degree and extent of the reach of the act in question on society. **It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order**. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of public, it could raise problem of law and order only.".

[42] It is my judgment that, based on the facts and circumstances of the case, the usage of the word "Allah" particularly in the Malay version of the Herald, is without doubt, do have the potential to disrupt the even tempo of the life of the Malaysian community. Such publication will surely have an adverse effect upon the sanctity as envisaged under **Article 3(1)** and the right for other religions to be practiced in **peace and harmony** in any part of the Federation. Any

such disruption of the even tempo is contrary to the hope and desire of peaceful and harmonious co-existence of other religions other than Islam in this country.

[43] Based on the reasons given by the Minister in his Affidavit In Reply, it is clear that he was concerned with national security and public order.

[44] When such exercise of discretion by the Minister becomes a subject of a judicial review, it is the duty of the court to execute a balancing exercise between the requirement of national security and public order with that of the interest and freedom of the respondent. As a general principle, as decided by case law, the courts will give great weight to the views of the executive on matters of national security. It is suffice to refer to what Lord Woolf C.J. said in ***A, X and Y v. Secretary of State for the Home Department*** **[2004] QB 335**, which reads as follows:-

> "Decisions as to what is required in the interest of national security are self-evidently within the category of decisions in relation to which the court is required to show considerable deference when it comes to judging those actions.".

[45] In other words, there is no particular standard of proof to show that the decision was based on national security. In such circumstances, as the case at hand, since the Minister concerned is in-charge of internal security, it is not for the court to probe for strong evidential proof of national security. It must be inferred that the

Minister's decision, involving national security, is rational. (See: ***R v. Secretary of State for the Home Department Exp. Mc Quillan*** **[1995] 4 All E.R 400**; and ***R v. Secretary of State for the Home Department, ex parte Hosenball*** **[1977] 3 All E.R 452**).

[46] In ***Hosenball's*** case, Lord Denning MR (at page 461 of the citation above) wrote as follows:-

> "The Secretary of State, as I have said, declined to give those particulars. He declined to add anything to the short statement enclosed in the first letter. It seems to me, if you go through those requests one by one, even including (e) on which counsel for Mr Hosenball so much relies, it is apparent that if the Secretary of State complied with that request it would be quite possible for a clever person, who was in the know, to track down the source from which the Home Secretary got the information. That might put the source of the information himself in peril. Even if not in peril, that source of information might dry up. Rather than risk anything of the kind, the Home Secretary was quite entitled to say: 'I am sorry but I cannot give you any further information.'
>
> *Conclusion*
>
> **There is a conflict here between the interests of national security on the one hand and the freedom of the individual on the other. The balance between these two is not for a court of law. It is for the Home Secretary.** He is the person entrusted by Parliament with the task. In some parts of the world national security has on occasions been used as an excuse for all sorts of infringements of individual liberty. But not in England. Both during the wars and after them, successive ministers have discharged

their duties to the complete satisfaction of the people at large. They have set up advisory committees to help them, usually with a chairman who has done everything he can to ensure that justice is done. They have never interfered with the liberty or the freedom of movement of any individual except where it is absolutely necessary for the safety of the state. **In this case we are assured that the Home Secretary himself gave it his personal consideration, and I have no reason whatever to doubt the care with which he considered the whole matter.** He is answerable to Parliament as to the way in which he did it and not to the courts here.

I would dismiss the appeal.".

9. Conclusion

[47] Applying the law to the facts and circumstances of the case and bearing in mind the principles to be taken in dealing with judicial review as laid down in the often-quoted case of ***Council of Civil Service Union & Ors v. Minister for the Civil Service*** **[1985] 1 AC 374**; **[1984] 4 All E.R 935,** it is my considered finding that the Minister has not acted in any manner or way that merit judicial interference on his impugned decision.

[48] In the circumstances and the facts of the case I am also mindful of the Latin maxims of "*salus populi suprema lax*" (the safety of the people is the supreme law) and "*salus republicae suprema lax*" (the safety of the state is the supreme law) do co-exist and relevant to the doctrine that the welfare of an individual or group must yield to

that of the community. It is also my reading that this is how the element of "in peace and harmony" in **Article 3(1)** is to be read with the freedom of religion in **Article 11(1) of the Federal Constitution**.

[49] On the available evidence too, I am satisfied that sufficient material have been considered by the Minister in discharging his function and statutory power under the **Printing Presses And Publications Act 1984**. Although the test under the written law is subjective, there are sufficient evidence to show that such subjective decision was derived by considering all facts and circumstances in an objective manner. Thus, there is no plausible reason for the High Court to interfere with the Minister's decision.

[50] Last, but not least, it is my judgment that the right of the State Legislature to enact laws, to ensure the protection and sanctity of Islam, under **Article 11(4)** is constitutional. I may add that such constitutional right of the States, especially where there are Rulers who are heads of the religion of Islam, fortified the position of Islam in the Federation that it should be immuned to any threat or attempt to weaken Islam's position as the religion of the Federation. It is also my judgment that any act or attempt of propagation on the Islamic population by other religion is an unlawful act.

[51] For completeness, I note that from a quick research on the history of the language of the Bible, it is clear that the word "Allah" does not appear even once as the name of God or even of a man in

the Hebrew Scriptures. The name “Allah” does not appear, even once in either the Old or New Testaments. There is no such word at all in the Greek New Testament. In the Bible world, God has always been known as **Yahweh**, or by the contraction **Yah**. That being the historical fact it can be concluded that the word or name “Allah” is not an integral part of the faith and practice of Christianity, in particular that of the Roman Catholic Church.

[52] I do not intend to make this judgment to be a study of comparative religions. The appeal today is not the proper forum. However, I must state that to refuse to acknowledge the essential differences between religions will be an affront to the uniqueness of world religions. To begin with, due recognition must be given to the names given to their respective Gods in their respective Holy books; such as “Yahweh” the God of the Holy Bible; “Allah” the God of the Holy Quran and “Vishnu” the God of the Holy Vedas.

[53] With the above historical and religious fact, I could not find any plausible reason as to why the respondent is adamant on using the word “Allah” in its weekly newsletter, particularly in its Malay version. Since “Allah” is never an integral part of the faith of the respondent, it is reasonable to conclude that the intended usage will cause unnecessary confusion within the Islamic community and is surely not conducive to the peaceful and harmonious tempo of life in the country. This conclusion is fortified by the fact that the majority population in this country is Malay and whose religion is Islam. A

fortiori, under **Article 160 of the Federal Constitution**, a "Malay" is defined as "a person who professes the **religion of Islam**, habitually speaks the Malay language, …".

[54] It is the constitutional duty of all stakeholders who believed in the rule of law to uphold and protect the Constitution. It is my judgment that the application for judicial review on matters of the nature as in this appeal militates against the spirit of "peaceful and harmonious" co-existence of other religion in this country.

[55] For reasons as explained above, I have no hesitation to allow the appeal by the appellants. I, therefore, allow the appeal. All orders by the High Court in this matter are set aside.

[56] And as agreed between the parties, there is no order as to costs.

Sgd.

DATO' SRI HAJI MOHAMED APANDI BIN HAJI ALI
Judge
Court of Appeal, Malaysia
Putrajaya

Dated this 14th day of October 2013.

Counsel/Solicitors

For the 1st and 2nd Appellant:

Suzana binti Atan, Dr. Arik Sanusi bin Yeop Johari, Munahyza binti Mustafa, Andi Razalijaya bin A Dadi and Shamsul bin Bolhassan
Peguam Kanan Persekutuan
Jabatan Peguam Negara
Bahagian Perbicaraan & Rayuan
Aras 5, Blok 4G7
No. 45, Persiaran Perdana
Presint 4, 62100 Putrajaya

For the 3rd Appellant:

Mubashir bin Mansor, Dato' Zainul Rijal bin Abu Bakar, Nur Syazwani binti Rosli and Damian Kiethan
Tetuan Zainul Rijal Taiha & Amir
Peguambela & Peguamcara
No. 15-5, 5th Floor, Jalan USJ 9/5Q
Subang Business Centre
47620 Subang Jaya
Selangor

For the 4th Appellant:

Abdul Halim bin Bahari, Azril bin Mohd Amin and Mohd. Fasha bin Musthafa
Tetuan Azra & Associates
Peguambela & Peguamcara
Unit 1008, Block A, Phileo Damansara II
Off Jalan Damansra
46350 Petaling Jaya
Selangor

For the 5th Appellant:

Mohd Adli bin Ithnin
Tetuan Adli & Co
Peguambela & Peguamcara
No: 26-1, Jalan BU 4 A
Taman Bachang Utama
75350 Melaka

For the 6th Appellant:

Ikbal bin Salam
Tetuan Ikbal Salam & Associates
Peguambela & Peguamcara
No. 40 & 42, Jalan Molek 1/28
Taman Molek
81100 Johor Bahru

For the 7th Appellant:

Nawal binti Hanin @ Abdul Rahman and Siti Razasah binti Abd. Razak
Tetuan Omayah Nawal & Partners
Peguambela & Peguamcara
No. 1562, Tingkat 1, Jalan Kota
05000 Alor Setar
Kedah

For the 8th Appellant:

Mohamed Haniff bin Khatri Abdullah, Mohd Tajuddin bin Abd. Razak and Adzly Ab Manas
Tetuan Tajuddin Razak
Peguam & Peguamcara
NW-02-42, Cova Square
Jalan Teknologi, Kota Damansara
47810 Petaling Jaya
Selangor

For the 9th Appellant:

Tan Sri Dato' Dr. Abdul Aziz bin Abdul Rahman, Abdul Rahim bin Sinwan and Ridha Abadah bin Subri
Tetuan Azra & Associates
Peguambela & Peguamcara
Unit 1008, Block A, Phileo Damansara II
Off Jalan Damansara
46350 Petaling Jaya
Selangor

For the Respondent:

Porres Royan, S. Selvarajah, Benjamin Dawson and Annou Xavier
Tetuan Fernandez & Selvarajah
Peguambela & Peguamcara
No. 12B (Tingkat 2), Jalan Yong Shook Lin
46200 Petaling Jaya
Selangor