

DALAM MAHKAMAH PERSEKUTUAN DI MALAYSIA
BIDANGKUASA ASAL GUAMAN NO. 2/2011

ANTARA

1. ZAINA ABDIN BIN HAMID @ S. MANIAM
2. SURINDRAN A/L ZAINA ABDIN
(Melalui plaintif pertama sebagai ayah dan sahabat wakilnya)
3. MOHANASUBASH A/L ZAINA ABDIN
(Melalui plaintif pertama sebagai ayah dan sahabat wakilnya)
4. CHANDRIKA A/P ZAINA ABDIN
(Melalui plaintif pertama sebagai ayah dan sahabat wakilnya)

...PERAYU-PERAYU

DAN

1. KERAJAAN MALAYSIA
2. KERAJAAN NEGERI SELANGOR
3. MAJLIS AGAMA ISLAM SELANGOR
4. MAJLIS PERUNDINGAN MALAYSIA UGAMA
BUDDHA, KRISTIAN, HINDU DAN SIKH

...RESPONDEN-RESPONDEN

4TH RESPONDENT'S OUTLINE SUBMISSION

*(In respect of the reference to the Federal Court pursuant to
Section 84 Courts of Judicature Act 1964)*

A. Introduction

1. This submission is filed in respect of the Appellants' reference to the Federal Court pursuant to section 84 of the Courts of Judicature Act 1964 by order of the learned High Court Judge, Justice Nurchaya Haji Arshard J on 6 October 2010.¹

¹Pages 2-6 RSC

2. A chronology of events in the High Court and the Court of Appeal has been set out at pages 310-311 of the Appellants' Record of Special Case ("RSC"). In summary, they are:
 - 2.1 The Appellants filed an Originating Summons dated 25.2.2002 at the Shah Alam High Court seeking certain declarations.²
 - 2.2 The 1st to 3rd Respondents (the Government of Malaysia, the State Government of Selangor and the Majlis Agama Islam Selangor) filed an application to strike out the Originating Summons under Order 18 rule 19, Rules of the High Court 1980 as being an abuse of process of the Court because the matters raised herein are within the exclusive jurisdiction of the Syariah Court.
 - 2.3 That application was allowed by the High Court and the Appellants' appeal was allowed by the Court of Appeal on 25.6.2009. The Court ordered the Originating Summons to be reinstated and remitted to the High Court for hearing on its merits.³
 - 2.4 On 27.9.2010, the High Court referred several questions to this Honourable Court and ordered stay of proceedings pending these proceedings.⁴
 - 2.5 The 1st Respondent (Government of Malaysia) filed an appeal against the High Court's decision to refer the matter. The appeal was heard and dismissed by the Court of Appeal on 21.11.2011.⁵

²Pages 332-349 RSC

³Pages 39-53 RSC. The written judgment has been reported as Zaina Abidin Hamid & Ors v Kerajaan Malaysia & Ors [2009] 6 CLJ 683

⁴Pages 312-314 RSC

⁵ Broad Grounds of Judgment delivered *ex-tempore* by the Court of Appeal on 21.11.2011-Annexure 1

B. Locus standi and legal interest of the 4th Respondent (“MCCBCHST”)

3. The 4th Respondent is a society founded in 1982 and was registered pursuant to the Societies Act 1965 (Act 335) on 6 August 1983.⁶ It consists of 11 member organisations representing 5 major faiths in Malaysia, namely Buddhism, Christianity, Hinduism, Sikhism and Taoism.⁷

3.1 The 4th Respondent is dedicated to the promotion of goodwill, harmony and unity among all Malaysians irrespective of creed, religion, race, culture or gender. Article 3 of its Constitution states its aims as follows:⁸

- a. To promote understanding, mutual respect and co-operation between people of different religions.
- b. To study and resolve problems affecting all inter religious relationships.
- c. To make representations regarding religious matters when necessary.
- d. To advance and promote the religious, cultural, educational and social rights and interests of the religious bodies.

3.2 Article 4 of the 4th Respondent’s Constitution states its objects as:⁹

⁶ Affidavit-In-Reply- 4th Defendant, para 3 at page 180 RSC

⁷ The 11 member organisations are: (para 6 at pages 181-182 RSC)

- a. Malaysian Buddhist Association,
- b. Buddhist Missionary Society of Malaysia
- c. Sasana Abhiwurdhi Wardhana Society
- d. Catholic Bishops’ Conference
- e. Council of Churches of Malaysia
- f. National Evangelical Christian Fellowship
- g. Malaysian Gurdwara Council
- h. Sikh Naujawan Sabha Malaysia
- i. Khalsa Diwan Malaysia
- i. Malaysia Hindu Sangam
- k. Federation of Taoist Associations Malaysia

⁸ MCCBCHST’s Constitution, page 236 RSC

- a. To uphold and promote the ideas as enunciated in the Rukun Negara.
 - b. To promote unity, harmony and understanding amongst people of different religions through conferences, seminars and other channels.
 - c. To print, publish and distribute journals, periodicals, leaflets or books that the Executive Committee may consider desirable for the promotion of its objects, with the proviso that, prior approval must be obtained from the competent authority.
- 3.3 One of the members of the 4th Respondent is the Malaysia Hindu Sangam, which assists, advises and where necessary, represents the Hindus in Malaysia. The Malaysia Hindu Sangam provides advice to Hindus in respect of the matters that govern non-Muslims and Hindu customs and practices.
4. The 1st Appellant was told that the 4th Respondent could help resolve problems arising between different religious groups. The 1st Appellant approached the 4th Respondent through the Malaysia Hindu Sangam.¹⁰
- 4.1 The officer from the 4th Respondent informed the 1st Appellant that under the Selangor's State administrative law, the 1st Appellant is defined as a "Muslim".
 - 4.2 Consequently, the 1st Appellant had asked his solicitors, Messrs Kanesalingam & Co. to join MCCBCHST as the 4th Respondent so that MCCBCHST must also accept the 1st Appellant as a Hindu and will help him. Further, MCCBCHST may assist the Court in this public interest litigation to come to a decision which is fair and just in the public interest.

⁹ MCCBCHST's Constitution, page 236 RSC

¹⁰ Plaintiff's 1st Affidavit, para 45 at page 89 RSC

5. The legal interest of the 4th Respondent arises as follows:
- 5.1 When the 1st Appellant sought the assistance and advice of the 4th Respondent, and despite informing the 4th Respondent he does not profess the religion of Islam, the 4th Respondent informed the 1st Appellant that Syariah law defines him as a “Muslim” in form.
- 5.2 It is accepted by all parties that State religious administrative law cannot and does not apply to persons who do not profess the religion of Islam. In the Appellants’ case and from the facts it appears that they do not practice or profess the religion of Islam. Yet, they are identified as Muslims and Syariah law applies to them.
- 5.3 The Appellants have chosen to join the 4th Respondent as a party to these proceedings as there is a clear factual link and the 4th Respondent has no objections to the joinder. It would be appropriate for all facts and matters to be ventilated, and the 4th Respondent is a necessary party for a just and full determination of the case.¹¹

¹¹ Order 15 rule 6, Rules of the High Court 1980 [*Tab C of the 4th Respondent’s Bundle of Authorities (“4th RBOA”)*] provides that:

(2) At any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application:

(a)...

(b) order any of the following persons to be added as a party, namely:

(i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or

(ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter; but no person shall be added as a plaintiff without his consent signified in writing or in such other manner as may be authorized.

Also refer to ***Meng-Eu Lim Judy v RSP Investment (S) Pte Ltd*** [1999] 1 SLR 231 [*Tab K 4th RBOA*]; Broad Grounds of Court of Appeal delivered ex-tempore by the court of Appeal 21 November 2011: “...The five question referred to the Federal Court for determination would directly affect the second, third and fourth Defendants, namely, the State Government of Selangor, Majlis Agama Islam Selangor and Majlis

- 5.4 In particular, the question whether the Appellants should be treated as a person professing the religion of Islam is open. The 4th Respondent at this juncture is still unclear how the Appellants should be treated: as a person professing the religion of Islam or otherwise. It is important for the 4th Respondent to know and be bound by a decision of the Courts as assisting and advising a person professing the religion of Islam by a non-Muslim may constitute offences under sections 4-9 of Selangor's Enactment No. 1 of 1988, namely, Non-Islamic Religions (Control of Propagation Amongst Muslims) Enactment 1988.¹²
- 5.5 Further, the issues that arise in this case are in the public interest, and there have been and continue to be cases which come before the 4th Respondent where the religious status of the complainants are in doubt. The 4th Respondent needs to know how it will deal with and advise people who are in the same position as the Appellants when they seek help.
- 5.6 A brief explanation of the problems faced by those in the similar circumstance as the Appellants follows.
- a. The 4th Respondent had received and is still receiving complaints from the public, and although in a small number, they are the significant minorities. Almost every week, the 4th Respondent receives complaints from those who are being treated as Muslim even though they are professing and practicing other religions.¹³
 - b. In 2002, the 4th Respondent submitted a memorandum titled "Problems Faced by Non-Muslims in Freely Professing and Practising

Perundangan Ugama Buddha, Kristian, Hindu dan Sikh. That being in the case, that is essential for the Appellant herein to effect the service of Notice of Appeal to these three parties." -Annexure 1

¹² Section 4-9 of Selangor Enactment No. 1 of 1998 [*Tab H 4th RBOA*]

¹³ Affidavit-In-Reply- 4th Defendant, para 16 at page 185 RSC

Their Respective Religions” to the Human Rights Commission of Malaysia (SUHAKAM).¹⁴

- c. The 4th Respondent had requested a public inquiry to be conducted in relation to the problems faced by non-Muslims in freedom of professing and practicing their respective religions. However, until today, the request has not been fulfilled.
- d. Besides that, the 4th Respondent has consistently expressed its grievances to the relevant authorities:
 - (i) The 4th Respondent prepared a memorandum titled “Respect the Right to Profess and Practise One’s Religion” dated 20 October 2005.¹⁵ This memorandum outlined salient issues affecting non-Muslims, among others: a non-Muslim parent losing guardianship and custody of his/her children by a Syariah Court order given secretly on his/her absence with no notice to her/him and exhumations carried out indiscriminately pursuant to orders granted by the Syariah Courts in respect of graves in non-Muslim burial grounds.
 - (ii) The 4th Respondent further published an article titled “Unity Threatened by continuing Infringements of Religious Freedom, Note of Protest by MCCBCHST dated 15 June 2007”.¹⁶ The article highlighted a few personal tragedies cases suffered by, Lina Joy; Revathi; the widow of Moorthy Maniam, Kaliasammal Sinnasamy; and Subashini Rajasingam, where the Syariah system has caused the non-

¹⁴ Affidavit-In-Reply- 4th Defendant, para 18 at page 185 RSC, exhibit at pages 249-270 RSC

¹⁵ Affidavit-In-Reply- 4th Defendant, para 17 at page 185 RSC, exhibit at pages 285-309 RSC

¹⁶ Affidavit-In-Reply- 4th Defendant, para 17 at page 185 RSC, exhibit at pages 273-284 RSC

Muslim community to feel fear and uncertainty as to the sanctity of their family lives and their protection under the law.¹⁷

- (iii) The article together with the memorandum were submitted by the 4th Respondent to the National Unity Advisory Panel which was under the purview of the Ministry of the Prime Minister Department at that material time. However, until today, no such reforms have been made and more Malaysians, who has similar situation like the Appellants are suffering daily.
- (iv) In addition, the representatives of the 4th Respondents had on numerous occasions organised meetings between its Executive Members and the Government of Malaysia to discuss issues and problems which are stated in the above mentioned memorandums.¹⁸ Problems where non-Muslims are being treated as Muslims are for example,
- When a non-Muslim woman has a child with a Muslim man, the man leaves the woman and their children leaving the non-Muslim mother to bring these children up alone, or with her own family's assistance. Naturally, these children then follow a non-Muslim way of life as they are raised in the non-Muslim faith of their mother and her family. However, these children are treated as Muslims officially because one of their parents was a Muslim at the time of their birth. They are made to attend Islamic religious classes in school. They are teased, scolded and harassed by Malay school children, and even at times by their teachers. As a result, these children, at these tender

¹⁷ Lina Joy v Majlis Agama Islam Wilayah Persekutuan & Yang Lain [2007] 3 CLJ 557; Suresh Veerappan v Penguasa, Pusat Pemurnian Akidah Baitul Aman & Satu Lagi [2008] 8 CLJ 597 [*Tab E 4thRBOA*]; Kaliammal Sinnasamy v Majlis Agama Islam Wilayah Persekutuan (Jawi) & Ors [2011] 2 CLJ 165 [*Tab F 4thRBOA*]; Subashini Rajasingam v Saravanan Thangathoray & Other Appeals [2008] 2 CLJ 1

¹⁸ Affidavit-In-Reply- 4th Defendant, para 19 at page 186 RSC

ages suffer mental turmoil. They leave school early. They are thus deprived not only of their right to their religion, but also their right to be educated.¹⁹

- Another example is where the Registrar of Marriages cannot register the marriage of a “Muslim”. When one of the parties has a Muslim name or where one of his/her parents has a Muslim name, the Assistant Registrar cannot register the marriage.²⁰
- The non-Muslim who is treated as a Muslim suffers physical harassment as well as mental disturbance because they constantly live in fear of being arrested for doing a multitude of things that are legal for non-Muslims but illegal for a Muslims. A few examples are as follows²¹ (all sections quoted in the following paragraphs refer to the Syariah Criminal Offences (Federal Territories) Act 1997):²²
 - By going to temple, church or gurdwara (or any other place of worship other than a mosque) to pray, then such a “non-Muslim” commits an offence under **section 3** would be liable to fine of RM3,000 or two years imprisonment or both.
 - If a “non-Muslim” does not go to mosque for Friday prayers for 3 consecutive weeks then under **section 14** he would be liable to a fine of RM1,000 or six months imprisonment or both.
 - If a “non-Muslim”, being considered a Muslim, eats, drinks or smokes in public during the fasting month of Ramadhan, then,

¹⁹ Memorandum submitted by MCCBCHST to SUHAKAM, page 253 RSC

²⁰ Memorandum submitted by MCCBCHST to SUHAKAM, page 260 RSC

²¹ Memorandum submitted by MCCBCHST to SUHAKAM, pages 261-262 RSC

²² Syariah Criminal Offences (Federal Territories) Act 1997 [*Tab G 4th RBOA*]

pursuant to **section 15**, he would be liable to a fine of RM1,000 or six months imprisonment or both.

- If a “non-Muslim” gambles or is found in a gaming house, then under **section 18**, he could be fined up to RM3,000 or imprisoned for two years or both.
- If a “non-Muslim” drinks alcohol in a public place, then under **section 19(1)** he is liable to pay a fine of RM3,000 or imprisoned for up to two years or both.
- If a “non-Muslim” defies, disobeys or disputes a fatwa the under **section 9** he could be fined up to RM3,000 or imprisoned for two years and he faces the same punishment under **section 12** if he gives, propagates or disseminates any opinion concerning any issue contrary to fatwa.

C. Facts of the Appellants' Case

6. The facts of this case merit special attention. The Appellants' case is different from other reported decisions which have come before this Honourable Court. In particular this is not a case where a litigant seeks to leave the religion of Islam to profess another religion. This is not a scenario of what is usually known as an “apostasy case”. This is a case where the litigant (and his family) lived their lives as Hindus, but are treated as Muslims.
7. This case is also not a challenge to the religion of Islam. It is solely predicated on the constitutional rights of the Appellants to freedom of religion which, it is submitted, have been violated by a State administrative law thereby causing much human hardship and suffering.

8. The undisputed facts are these:

8.1 The 1st Appellant is a Malaysian citizen of Indian ethnicity. He was born on 5 August 1951. He is 62 years old (he was 52 years old at the time the Originating Summons was filed in 2002).

Family Background

8.2 The 1st Appellant was born to an Indian father who converted to Islam to marry the 1st Appellant's Indian Muslim mother.²³

8.3 The 1st Appellant's father passed away in 1979. The 1st Appellant's father took the name of Hamid but he was better known as Maniam to everyone who knew him. From the 1st Appellant's personal observation and experience, his father had lived as a Hindu and followed all the customary and religious rites of Hindus, for example, he went to the Hindu temple to pray; he celebrated all the major Hindu festivals such as Deepavali, Thaiponggal and Thaipusam, and he was a vegetarian on Tuesdays and Fridays. The 1st Appellant was made to follow his father to do the same.²⁴

8.4 The 1st Appellant's mother was born a Muslim but followed all the Hindu traditions. The 1st Appellant's mother also used to go to the Hindu temple with the 1st Appellant's father and the 1st Appellant. She never celebrated any Islamic events in her house.²⁵

Modes of Worship

8.5 The 1st Appellant never went to a Muslim mosque to pray and has always gone to Hindu temples.²⁶ The 1st Appellant has been going to Hindu temples together with his parents since he was young. The 1st Appellant

²³ Plaintiff's 1st Affidavit, para 7 at page 76 RSC

²⁴ Plaintiff's 1st Affidavit, para 10 at page 77 RSC

²⁵ Plaintiff's 1st Affidavit, para 11 at page 78 RSC

²⁶ Plaintiff's 1st Affidavit, para 13 at page 78 RSC

practices the teachings of Hinduism.²⁷ The 1st Appellant has never practiced any of the acts of worship of Islam.²⁸

Food habits

8.6 The 1st Appellant was influenced by his deceased father since young and he remains a vegetarian on Tuesdays and Fridays.²⁹

Wedding Ceremony

8.7 On 5 February 1986, the 1st Appellant married a Hindu, Suselia a/p M. Athiam in accordance with the Law Reform (Marriage and Divorce) Act 1976. The marriage was arranged by the 1st Appellant's parents in accordance with Hindu customs. The marriage was delayed for more than 6 years because of the death of the 1st Appellant's father and because of the 1st Appellant's artificial identity as a Muslim.³⁰

8.8 The 1st Appellant went through a traditional Hindu wedding ceremony according to Hindu rites and ceremonies on 1 March 1986.³¹

8.8.1 The wedding invitation card printed this: "*Madam Saramaniam, and.....on the occasion of the marriage of Mr. M. Balachander (son of late Mr CS Maniam) on Saturday 1st March 1986.....*". This card stated the 1st Appellant's father as Maniam and the 1st Appellant known by his Indian name, Balachandran.

8.8.2 At the second page of the invitation card, it was stated: "To the Wedding Guest.....the guest are invited to ask Lord Murugan to enrich their life together with His Gifts of Love, Joy and peace".

²⁷ Plaintiff's 1st Affidavit, para 12 at page 78 RSC

²⁸ Plaintiff's 1st Affidavit, para 5 at page 76 RSC

²⁹ Plaintiff's 1st Affidavit, para 10 at page 77 RSC

³⁰ Plaintiff's 1st Affidavit, para 18 at page 80 RSC; Marriage Certificate, page 215 RSC

³¹ Plaintiff's 1st Affidavit, para 20 at page 80 RSC; Wedding invitation card, pages 217-218 RSC

- 8.9 The 1st Appellant and his wife have three children. All of them have been brought up as Hindus by the 1st Appellant and his wife.

Funeral Ceremony of the 1st Appellant's late father

- 8.10 When the 1st Appellant's father passed away, the deceased was brought home and the family of the deceased performed Hindu funeral rites. However, the deceased's body was later taken away by a few Malay men. The deceased was then buried in the Sungei Besi Muslim Cemetery. The 1st Appellant and his wife were present at the burial. However, neither the 1st Appellant nor his brothers were asked to take part in the funeral. The 1st Appellant and his family members were treated by the Malay men as non-Muslims.³²

Deed Poll and Statutory Declaration

- 8.11 The 1st Appellant is known as Balachandran or Bala to his friends, family and colleagues. The 1st Appellant tried to officially change his name to Balachandran son of S. Maniam by a Deed Poll which he published in the Government Gazette No. 1686 of 1973.³³ The main content of the Deed Poll is reproduced here:

By this deed I the undersigned BALACHANDRAN s/o S. MANIAM of...now lately called ZAINA ABDIN BIN HAMID *alias* S. MANIAM (NRIC No. 8101672) do hereby:

1. For myself I wholly renounce relinquished and abandon the use of my former name ZAINA ABDIN BIN HAMID *alias* S. MANIAM and in place thereof do assume from the date hereof the name of BALACHANDRAN s/o S. MANIAM so that I may hereafter be called known and distinguished not by my former name of ZAINA ABDIN

³² Plaintiff's 1st Affidavit, para 10 at pages 77-78 RSC

³³ Plaintiff's 1st Affidavit, para 14-15 at page 79 RSC; Government Gazette at pages 209-211 RSC

BIN HAMID *alias* S. MANIAM but by my assumed name of BALACHANDRAN s/o S. MANIAM.

2. For the purpose of evidencing such my determination declare that I shall at all times hereafter in all records deeds and writings and in all proceedings dealings and transactions as well private as public and upon all occasions whatsoever use and sign the names of BALACHANDRAN s/o S. MANIAM in place of and in substitution for my former name of ZAINA ABDIN BIN HAMID *alias* S. MANIAM.
3. Expressly authorize and request all persons at all times hereafter to designate and address me by such name of BALACHANDRAN s/o S. MANIAM accordingly.

In witness whereof I have hereto subscribed my former and adopted names of ZAINA ABDIN BIN HAMID *alias* S. MANIAM and BALACHANDRAN s/o S. MANIAM and affirm my seal this 16th day of March, 1973.

Signed, sealed and delivered by
the abovenamed BALACHANDRAN
s/o S. MANIAM formerly ZAINA
ABDIN BIN HAMID *alias* S.
MANIAM in the presence of:

Sgd. BALACHANDRAN

Messrs K.C. Cheah & Company,
Advocates & Solicitors

- 8.12 On 9 January 1985, the 1st Appellant swore a statutory declaration under the Statutory Declarations Act 1960.³⁴ The extract of the statutory declaration is reproduced here:

Saya Balachandran a/l S.Maniamdengan sesungguhnya dan sebenarnya mengaku bahawa:

³⁴ Plaintiff's 1st Affidavit, para 16 at page 79 RSC; Statutory Declaration at page 213 RSC

Saya adalah seorang yang beragama Hindu daripada hari yang saya lahir saya ialah seorang Hindu dan mengikut adat adat Hindu. Dengan ini saya harap saya dibenarkan menjadi seorang yang beragama Hindu.

dan saya membuat surat akuan ini dengan kepercayaan bahawa apa-apa yang tersebut di dalamnya adalah benar, serta menurut Undang-Undang Surat Akuan 1960.

The 2nd to 4th Appellants brought up as Hindus

- 8.13 The 2nd to 4th Appellants have been brought up as Hindus.³⁵ Their parents want them to be Hindus. They were brought up and raised as Hindus. They also regularly say their Hindu prayers.³⁶
- 8.14 The 2nd to 4th Appellants wear the Hindu holy ash “Thirunuru” and the circular mark worn by Hindus, on their foreheads, called the “pottu”.³⁷
9. In short, the Appellants have been professing and practicing Hinduism since they were born as evidenced from their way of life, modes of worship, food habits, celebration of Hindu festivals and ceremonies. But they are under Selangor’s State administrative law treated as Muslims.

D. Conclusion

10. It is submitted that Article 11(1) of the Federal Constitution which provides that every person has the right to profess and practice his religion must be read liberally, expansively and progressively.³⁸

³⁵ Plaintiff’s 1st Affidavit, para 23 at pages 80-81 RSC; Plaintiff’s 2nd Affidavit, para 10 at pages 105 RSC

³⁶ Plaintiff’s 2nd Affidavit, para 12 at pages 106 RSC

³⁷ Plaintiff’s 1st Affidavit, para 31 at pages 83 RSC; Plaintiff’s 2nd Affidavit, para 13 at pages 107 RSC

³⁸ Article 11 Federal Constitution [*Tab I 4th RBOA*]

ii. M. P. Jain in Indian Constitutional Law wrote:³⁹

Religion is a matter of faith. A religion, undoubtedly, has its basis in a system of beliefs and doctrines which are regarded by those who profess that religion as conducive to their spiritual well-being, but it also something more than merely doctrine or belief. **A religion may not only lay down a code of ethical rule for its followers to accept, but may also prescribe rituals and observances, ceremonies and modes of worship which are regarded as an integral part of that religion.** These forms and observances might extend even to matters of food and dress. Therefore, the constitutional guarantee regarding freedom of religion contained in Article 25(1) (our Article 11) extends even to rites and ceremonies associated with a religion.

(emphasis mine)

12. In the Appellants' case, it would appear that on the facts, the Appellants pursuant to the exercise of their rights under Article 11 have in both form and conduct professed and practiced Hinduism. They do not profess and practice the religion of Islam, and they should not be treated as such.

The 4th Respondent has no objections to the orders being sought by the Appellants.

Dated this 2nd day of February 2012



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Counsel for the 4th Respondent
Edmund Bon Tai Soon

³⁹M P Jain, Indian Constitutional Law, 5th Edn, 2003, Volume 2, pages 1408-1409 [Tab J 4thRBOA]

This 4th Respondent's Outline Submission is filed by Messrs Chooi & Co, solicitors for the abovenamed 4th Respondent, whose address for service is at Level 23, Menara Dion, No. 27, Jalan Sultan Ismail, 50250 Kuala Lumpur.

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[Ref: 2009 1517 EB]

DALAM MAHKAMAH RAYUAN MALAYSIA

(BIDANGKUASA RAYUAN)

RAYUAN SIVIL NO: B-01-685-10

ANTARA

KERAJAAN MALAYSIA

...PERAYU

DAN

1. ZAINA ABDIN BIN HAMID @ S. MANIAM

2. SURINFRAN A/L ZAINA ABDIN

(melalui Plaintiff pertama sebagai ayah dan sahabat wakilnya)

3. MOHANASUBASH A/L ZAINA ABDIN

(melalui Plaintiff pertama sebagai ayah dan sahabat wakilnya)

4. CHANDRIKA A/P ZAINA ABDIN

(melalui Plaintiff pertama sebagai ayah dan sahabat wakilnya)

...RESPONDEN-RESPONDEN

**Broad Grounds of Judgment delivered *ex-tempore*
by the Court of Appeal on 21.11.2011**

Quoram: Y.A. Datuk Wira Low Hop Bing, HMR

Y.A. Dato' Sri Abu Samah bin Nordin, HMR

Y.A. Dato' Linton Albert, HMR

We are grateful to Mr. Noor Hisham, Mr. Fahri Azzat and Mr. Edmund Bon's submission. Our decision is unanimous. On the submission pursuant to the preliminary objection raised for the Respondent, the immediate question for our determination is whether rule 6 of the Rules of the Court of Appeal 1994 has been complied with? The operative words in rule 6 relates to the mandatory service of the Notice of appeal, "served on all parties directly affected". The five questions referred to the Federal Court for determination would directly

affect the second, third and fourth Defendants namely, The State Government of Selangor, Majlis Agama Islam Selangor and Majlis Perundangan Malaysia Uagama Buddha, Kristian, Hindu dan Sikh. That being in the case, that is essential for the Appellant herein to effect the service of Notice of Appeal to these three parties. It is not disputed that the Notice of Appeal is not served to them. Rule 6 is not complied with. This appeal, therefore is incompetent and dismissed *in limine*. As agreed (between the parties) no order as to costs.