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

SUMMARY OF DECISION

[1] Basically this is an appeal against the decision of the High Court arising from an application for judicial review of the imposition of a condition in the publication permit of the Herald – The Catholic Weekly. The impunged condition was the prohibition of the name "Allah" in the said publication. In the course of allowing the judicial

review the learned High Court judge also allowed certain declaratory relief orders pertaining to the respondent's constitutional right to use the name "Allah".

[2] The law on judicial review in this country is trite law; namely judicial review is not concerned with the merits of a decision but with the manner the decision was made; and that there are 3 categories upon which an administrative decision may be reviewed, i.e. 1. Illegality; 2. Irrationality and 3. Procedural impropriety. When the decision involved an exercise of a discretion, the determinable issues depend on the facts of the case.

[3] 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 our considered finding that the Minister has not acted in any manner or way that merit judicial interference on his impugned decision.

[4] On the constitutionality of the action of the 1st appellant to impose the impunged condition prohibiting the usage of the word "Allah" in the Herald, it is our judgment that there is no infringement of the any of the constitutional rights, as claimed by the respondent.

[5] It is our common finding that the usage of the name "Allah" is not an integral part of the faith and practice of Christianity. From such finding, we find no reason why the respondent is so adamant to use the name "Allah" in their weekly publication. Such usage, if allowed, will inevitably cause confusion within the community.

[6] In the circumstances and the facts of the case we are 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 our 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**.

[7] On the evidence before us too we are 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.

[8] The detailed explanations and reasons for our findings can be seen in the full text of three separate written judgments, which shall

be made available to all parties immediately, at the conclusion of today's proceedings. My learned brothers, Abdul Aziz bin Abdul Rahim, JCA and Mohd. Zawawi bin Salleh, JCA have read and approved my judgment. In addition to my judgment, both of my learned brothers have respectively written separate supporting judgments, of which I agree with their methodological analysis and findings.

[9] In the light of our findings, we are unanimous in our decision to allow the appeal by the appellants. Appeal is therefore allowed. All orders given on 31/12/2009 by the High Court pursuant to the Judicial Review application are hereby set aside. As agreed between all parties there will be no order as to costs.

Sdg.

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

Dated this 14th day of October 2013.