DALAM MAHKAMAH PERSEKUTUAN MALAYSIA

(BIDANGKUASA RAYUAN)

PERMOHONAN SIVIL NO. 08-690-11/2013

ANTARA

TITULAR ROMAN CATHOLIC ARCHBISHOP
OF KUALA LUMPUR … PEMOHON

DAN

1. MENTERI DALAM NEGERI

2. KERAJAAN MALAYSIA

3. MAJLIS AGAMA ISLAM & ADAT MELAYU TERENGGANU

4. MAJLIS AGAMA ISLAM WILAYAH PERSEKUTUAN KUALA LUMPUR

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

… RESPONDEN-RESPONDEN

Coram: AriffinZakaria KHN
MdRaus Sharif PMR
ZulkefliMakinudinHBM
Richard Malanjum HBSS
Suriyadi Halim Omar HMP
Zainun Ali HMP
Tan KokWhaHMP

Section 96 of the Court of Judicature Act 1964, which governs the instant application for leave to appeal to the Federal Court, is most clearly and unambiguously worded. It provides:

> "Subject to any rules regulating the proceedings of the Federal Court in respect of appeals from the Court of Appeal, an appeal shall lie from the Court of Appeal to the Federal Court with the leave of the Federal Court -
>
> > *(a)* from any judgment or order of the Court of Appeal in respect of any civil cause or matter decided by the High Court in the exercise of its original jurisdiction; involving a question of general principle decided for the first time or a question of importance upon which further argument and a decision of the Federal Court would be to public advantage;or
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> > *(b)* from any decision as to the effect of any provision of the Constitution including the validity of any written law relating to any such provision.

Where the prerequisites of sub-section (a) or (b) are satisfied, an appeal shall lie from the Court of Appeal to the

Federal Court with the leave of the Federal Court. Needless to say, where the prerequisites are satisfied, leave to appeal could not be refused. That translates, that the task of this Court, in relation to the instant application or indeed any application for leave to appeal, is only to find if the prerequisites of sub-section (a) or (b) have been met. At the stage of application for leave, the task of this Court is no more involved than that. At the stage of application for leave, there should not be a rush to judgment of the issues and its merits, which, in the instant case, have yet to be canvassed and argued.

Pertinent to the prerequisites of section 96 are the following facts. By letter dated 7.1.2009, the Ministry Of Home Affairs Malaysia informed the Applicant that the Applicant's publication permit was subject to the conditions, namely (i)that the Applicant was prohibited from using the word "Allah" in the Herald – The Catholic Weekly, and, (ii) that the word "Terhad", which conveys the meaning that circulation of the publication is restricted to churches and to Christians only, be printed on the front of the Herald – The Catholic Weekly, until the court has decided on the matter.

By way of an application for judicial review, the Applicant applied to quash condition (i) only. Further and or alternatively, the Applicant also applied for declarations to declare that the Applicant had the constitutional right, pursuant to Articles 3(1), 10, 11 and 12 of the Federal

Constitution, to use the word "Allah" in the Herald –The Catholic Weekly, and that the Printing Presses and Publications Act 1984 did not empower the Respondents to impose condition (i) which was ultra vires the Printing Presses and Publications Act 1984 (Act 301).

Basically, the 1st and 2nd Respondents justified and defended condition (i) on the ground that it was necessary to avoid any confusion amongst religions and to assuage the religious sensitivities of the people which could threaten the security and peace of the nation. In paragraph 46 of his opposing affidavit dated 6.7.2009, the Minister elaborated on that ground as follows: "Saya selanjutnya menyatakan bahawa penggunaan kalimah Allah berterusan oleh pemohon boleh mengancam keselamatan dan ketenteraman awam kerana ianya 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 Tuhan Yang Maha Esa bagi penganut agama Islam". The 1st and 2nd Respondents contended that condition (i) had not infringed the constitutional right of the Applicant, be it under Articles 3, 10, 11 or 12 of the Federal Constitution.

At the conclusion of the hearing, the High Court quashed condition (i) and declared that the Applicant had

the constitutional right, pursuant to Articles 3(1), 10, 11 and 12 of the Federal Constitution, to use the word "Allah" in the Herald –The Catholic Weekly.

However, those orders were set aside on appeal. The Court of Appeal held that condition (i) was valid and lawful (per Abdul Aziz Abdul Rahim JCA) and that the Minister had not acted in any manner or way that merited judicial interference (per Mohamed Apandi Ali JCA, as he then was). Both JJCA held that condition (i) was an exercise of an administrative discretion under Act 301, that the imposition thereof, which was made after consideration of all relevant factors, was not an arbitrary act (per Mohamed Apandi Ali JCA, as he then was) and or was within the perimeters of Act 301 (per Abdul Aziz Abdul Rahim JCA), and that condition (i) could not therefore be struck down as unreasonable and or unlawful.

With respect to the declarations by the High Court on the constitutional right of the Applicant, both JJCA held that Article 3(1) justified the existence of Article 11(4), and that Article 11(4) in turn empowered the enactment of State laws to curb the propagation of other religions to followers of Islam. Abdul Aziz Abdul Rahim JCA furthermore observed that the Herald – The Catholic Weekly, which was accessible "online", could be read by both Muslims and non-Muslim, while Mohamed Apandi Ali JCA explicated that it is unlawful to propagate other religions to followers of Islam.

On the basis of the above irrefragable facts, it is evident that at each and every stage that condition (i) had been first considered and then reviewed,by the Minister who imposed it, by the High Court who set it aside, and by the Court of Appeal who upheld condition (i), there were questions and or issues on the constitutionality of condition (i). It is equally evident that those constitutional questions/issues were either defended and justified by the Minister and answered by the Courts on the basis of the provisions of the Constitution and its effect. The High Court and the Court of Appeal might have reached different results. But it remains all the same that were clearly decisions by the courts below on the effect of the provisions of the Constitution. Section 96(b) has only one prerequisite -"from any decision as to the effect of any provision of the Constitution including the validity of any written law relating to any such provision". It is plain and obvious that the sole prerequisite of section 96(b) has been satisfied.

The constitutional questions should be answered by the Federal Court. They are too grave to be answered by any other. I would therefore grant leave for the constitutionality of condition (i) to be raised in an appeal to the Federal Court.

Lastly I wholly associate myself with the observation of his Lordship CJSS at para 61 of his judgment.

Dated this 23rd day of June 2014.

Tan Sri Tan Kok Wha