IN THE FEDERAL COURT OF MALAYSIA

(APPELLATE JURISDICTION)

CIVIL APPLICATION NO.: 08-690-11/2013

BETWEEN

TITULAR ROMAN CATHOLIC ARCHBISHOP OF KUALA LUMPUR … APPLICANT

AND

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**

… RESPONDENTS

IN THE COURT OF APPEAL OF MALAYSIA

(APPELLATE JURISDICTION)

CIVIL APPLICATION 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 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 … APPLICANT**

AND

TITULAR ROMAN CATHOLIC ARCHBISHOP

OF KUALA LUMPUR … RESPONDENTS

IN THE HIGH COURT OF MALAYA IN KUALA LUMPUR

APPLICATION FOR JUDICIAL REVIEW NO.: R1-25-28-2009

BETWEEN

TITULAR ROMAN CATHOLIC ARCHBISHOP OF KUALA LUMPUR … APPLICANT

AND

1. MENTERI DALAM NEGERI

2. KERAJAAN MALAYSIA … RESPONDENTS

CORAM:

ARIFIN ZAKARIA (CJ)

RAUS SHARIF (PCA)

ZULKEFLI AHMAD MAKINUDIN (CJM)

RICHARD MALANJUM (CJSS)

SURIYADI HALIM OMAR (FCJ)

ZAINUN ALI (FCJ)

JEFFREY TAN KOK WHA (FCJ)

JUDGMENT OF ZAINUN ALI FCJ

INTRODUCTION

1. I shall begin by saying that it is customary that reasons are seldom, if ever, provided in the grant or dismissal of leave applications, save for matters of great import, or where it is crucial that guidance be given to stakeholders.

2. It is arguable though, that there is value in transparency and accountability, both for the integrity of the justice system generally and for the parties to know why the apex court has declined or allowed their application for leave, as the case may be.

3. However on the flipside, it has been said that it is better to avoid comments on the matter when the merits of the case have not been heard, to avoid further confusion. In fact the latter is in line with international practice (See **Webb v UK [1997] 24 E.H.R.R. CD 73** such that it lends support to the saying that silence is golden.

4. However, for the purposes of this leave application, the issues are too weighty to suffer indifference. Thus in this case transparency would still be the best policy.

5. As a start, although much of the factual background and legal dimension of this application had already been well documented, some relevant points will nevertheless be given, as to provide an unsparing account of the issues at hand.

6. The issues are important, for they stand in the teeth of a full blown exercise of power. Thus the desire to get a correct answer takes on greater urgency.

7. This application arose when the Applicants, aggrieved with the 1st Respondent's (hereinafter referred to as the Minister) Letter of 7 January 2009 (the Minister's letter), filed an application for Judicial Review of the said Order to the High Court pursuant to Order 53 rule 3(1) of the Rules of the High Court 1980 (RHC). The relief sought for were, inter alia, an Order of Certiorari, Declaration, for stay of the decision, costs and other reliefs. The High Court on 24.4.2009 granted leave to which to the Attorney General's Chambers did not object.

8. The Minister's letter, whilst approving the permit to publish the Applicant's Catholic Weekly "The Herald", imposed two conditions thereon. The 1st condition was that the Applicant was prohibited from using the word "Allah" in the Bahasa Malaysia version of the Herald until such time the Court makes a decision on the matter. The second condition is that the publication is restricted only to the Church and to those who profess the Christian faith.

9. It is undisputed that whilst the Applicant did not resist the second condition, they did the first. Thus this application for judicial review of the Minister's Order.

10. It was the 1st Condition above ("the impugned decision") which was the basis of Applicant's application for judicial review.

11. It is convenient to briefly state the grounds in support of the Applicant's application which are as follows:-

"… The Respondents in making the decision dated 7.1.2009:-

i) acted in breach of the rules of natural justice, procedural and substantive fairness and the duty to act fairly;

ii) asked the wrong questions in the decision making process;

iii) took into account irrelevant considerations;

iv) omitted to take into account relevant considerations;

v) acted in violation of the Applicant's legal rights in line with the spirit, letter and intent of Articles 3, 10, 11 and 12 of the Federal Constitution;

vi) were irrational and unreasonable within the ambit of the principles laid down in Associated Provincial Picture Houses Limited v. Wednesbury Corporation (1948) 1 KB 223;

vii) acted irrationally and unreasonably by prohibiting the Applicant from using the word "Allah" or directly quotting the word "Allah" from the Al-Kitab;

viii) acted illegally, misconstrued and misapplied the relevant provisions of the Printing Presses and Publication Act 1984;

ix) acted ultra vires the printing Presses and Publications Act 1984;

x) imposed conditions on the applicant which are oppressive and onerous; and

xi) acted mala fide."

12. The 3rd to 9th Respondents filed their applications under Order 53 Rule 8 of the RHC to be heard in opposition.

13. Basically, the issue before the Court relates to the exercise of power by the Minister (the 1st Respondent), prohibiting the Applicant from using the word “Allah” in the Bahasa Malaysia section of the Herald.

14. The High Court granted the relief sought for by the Applicant after hearing their Judicial Review Application.

THE HIGH COURT JUDGMENT

15. If it can be summarised, the High Court held that :-

    a. Judicial review to correct errors of law committed in exercising any discretion pursuant to the Printing Presses and Publications (Licenses and Permits) Rules, 1984 (the 1984 Rules) is not ousted by Section 13A of the Printing Presses and Publication Act, 1984 (“the Act”);

    b. in the exercise of his discretion to impose further conditions in the publication permit, the Minister (1st Respondent) took into account irrelevant matters instead of relevant matters. That, based on the uncontroverted historical evidence averted by the Applicant, the Minister had no factual basis to impose the additional conditions in the permit;

c. the Minister's conditions as imposed were illegal, null and void due to the following –

(i) although Article 3(1) of the Federal Constitution (FC) provides that Islam is the official religion of the Federation of Malaysia, other religions may be practised in peace and harmony in any part of the Federation;

(ii) the use of the word "Allah" being in practice of the Christian religion must be considered;

(iii) the word "Allah", based on evidence, is an essential part of the instruction and worship in the faith, of the Malay speaking community of the Catholic Church and is integral to the practice and propagation of their faith;

d. that the prohibition of the use of the word "Allah" in the Herald is unconstitutional since –

(i) it contravens the provisions of Articles 3(1), 11(1) and 11(3) of the FC;

(ii) it is an unreasonable restriction on the freedom of speech and expression under Article 10(1)(c) of the FC;

(iii) it is an unreasonable administrative act which offends the first limb of Article 8(1) of the FC;

e. that the Respondent's action was illogical and irrational. It is also inconsistent since the word "Allah" had been in use and permitted for worship in the Bahasa Malaysia edition of the Bible. Furthermore the reasons given by the 1st Respondent in the various directives were unreasonable;

f. that Section 9 of the various State Enactments which made it an offence to use courts words and expression could be construed in this manner –

(i) reading it in conjunction with Article 11(4) of the FC; and

(ii) by applying the doctrine of proportionally that is to test whether the legislative state action, which includes executive and administrative acts of the State, was disproportionate to the object it sought to achieve.

g. that the Respondents did not have materials to substantiate their contention that the use of the word “Allah” by the Herald could cause a threat to national security;

h. that “the court has to determine whether the impugned decision was in fact based on the ground of national security”; and

i. that the subject matter referred to in the proceedings was justiciable contrary to the objections raised by the Respondents.

THE COURT OF APPEAL

16. The learned judges of the Court of Appeal unanimously reversed the judgment of the High Court; in so doing, they handed down their respective judgments which will be referred to when necessary in this judgment.

17. It is the Applicant’s contention that the judgments of the two different tiers of the High Court and Court of Appeal have revealed acute differences in their legal approach as regards the extent of the Minister’s power and the question of public

order; that it also showed differences in their approach with regard to the legal principles applicable to the exercise of discretion by the Minister and the Constitutional safeguards of the freedom of expression and religion.

THE APPLICANT'S PROPOSED LEAVE QUESTIONS

18. The Applicant in Enclosure 2(a) sought leave, based on a set of proposed questions in three parts under the triple headings of **PART A - ADMINISTRATIVE LAW QUESTIONS**, **PART B – CONSTITUTIONAL LAW QUESTIONS** and **PART C – GENERAL QUESTIONS**. They are as follows:-

'Part A : The Administrative Law Questions

1. *Where the decision of a Minister is challenged on grounds of illegality or irrationality and/or Wednesbury unreasonableness, whether it would be incumbent on the Minister to place before the Court the facts and the grounds on which he had acted?*

2. *Whether the decision of a Minister is reviewable where such decision is based on ground of alleged national*

security and whether it is a subjective discretion? Is the mere assertion by the Minister of a threat to public order, or the likelihood of it, sufficient to preclude inquiry by the Court?

3. *Whether in judicial review proceedings a Court is precluded from enquiring into the grounds upon which a public decision maker based his decision?*

4. *Where the decision of the Minister affects or concerns fundamental rights, whether the Court is obliged to engage in a heightened or close scrutiny of the vires and reasonableness of the decision?*

5. *Whether the characterization of the Minister's discretion as an absolute discretion precludes judicial review of the decision?*

6. *Whether the decision by the Minister to prohibit the use of the word "Allah" is inherently illogical and irrational in circumstances where the ban is restricted to a single*

publication of the restricted group while its other publications may legitimately carry the word?

7. *Whether the use of a religious publication by a religious group within its private place of worship and for instruction amongst its members can rationally come within the ambit of a ministerial order relating to public order or national security?*

8. *Can the Executive/State which has permitted the use of the word "Allah" in the Al Kitab prohibit its use in the Bahasa Malaysia section of the Herald – a weekly newspaper of the Catholic Church ('the Herald'), and whether the decision is inherently irrational?*

9. *Whether it is legitimate or reasonable to conclude that the use of the word "Allah" in the Herald which carries a restriction 'for Christians only' and 'for circulation in church' can cause confusion amongst those in the Muslim community?*

10. *Whether the claims of confusion of certain persons of a religious group could itself constitute threat to public order and national security?*

Part B: The Constitutional Law Questions

1. *Whether Article 3(1) of the Federal Constitution is merely declaratory and could not by itself impose any qualitative restriction upon the fundamental liberties guaranteed by Articles 10, 11(1), 11(3) and 12 of the Federal Constitution?*

2. *Whether in the constitution of Article 3(1) it is obligatory for the Court to take into account the historical constitutional preparatory documents, namely, the Reid Commission Report 1957, the White Paper 1957, and the Cobbold Commission Report 1962 (North Borneo and Sarawak) that the declaration in Article 3(1) is not to affect freedom of religion and the position of Malaya or Malaysia as a secular state?*

3. *Whether it is appropriate to read Article 3(1) to the exclusion of Article 3(4) which carries the guarantee of non-derogation from the other provisions of the Constitution?*

4. *Whether it is a permissible reading of a written constitution to give precedence or priority to the articles of the constitution in the order in which they appear so that the Articles of the Federal Constitution that appear in Part I are now deemed to rank higher in importance to the Articles in Part II and so forth?*

5. *Whether on a true reading of Article 3(1) the words 'other religious may be practised in peace and harmony' functions as a guarantee to the non-Muslim religions and as a protection of their rights?*

6. *Whether on a proper construction of the Federal Constitution, and a reading of the preparatory documents, namely, the Reid Commission Report (1957), the White paper (1957) and the Cobbold Commission Report (1962), it could legitimately be said*

that Article 3(1) takes precedence over the fundamental liberties provisions of Part II, namely, Articles 8, 10, 11(1), 11(3) and 12 of the Federal Constitution?

7. *Whether the right of a religious group to manage its own affairs in Article 11(3) necessarily includes the right to decide on the choice of words to use in its liturgy, religious books and publications, and whether it is a legitimate basis to restrict this freedom on the ground that it may cause confusion in the minds of members of a another religious group?*

8. *Whether the avoidance of confusion of a particular religious group amounts to a public order issue to deny another religious group its constitutional rights under Articles 8, 10, 11(1), 11(3) and 12 of the Federal Constitution?*

9. *Whether it is reasonable or legitimate to conclude that the use of the word "Allah" for generations in the Al-Kitab (the Bahasa Malaysia/Indonesia translation of the Bible) and in the liturgy and worship services of the Malay*

speaking members of the Christian community in Malaysia, is not an integral or essential part of the practice of the faith by the community?

10. *Whether the appropriate test to determine if the practice of a religious community should be prohibited is whether there are justifiable reasons for the state to intervene and not the 'essential and integral part of the religion' test currently applied under Article 11(3)?*

11. *Whether the standards of reasonableness and proportionality which have to be satisfied by any restriction on freedom of speech in Article 10 and Article 8 is met by the present arbitrary restriction on the use of the word "Allah" imposed by the Minister of Home Affairs?*

12. *Whether it is an infringement of Article 10 and 11 of the Federal Constitution by the Minister of Home Affairs to invoke his executive powers to prohibit the use of a word by one religious community merely on the unhappiness and threatened actions of another religious community?*

13. *Whether the Latin maxim 'salus populi est suprema lex' (the welfare of the people is the supreme law) can be invoked without regard to the terms of the Federal Constitution and the checks and balances found therein?*

Part C: General

1. *Whether it is appropriate for a court of law whose judicial function is the determination of legal-cum-juristic questions to embark suo moto on a determination of theological questions and of the tenets of comparative religions, and make pronouncements thereto?*

2. *Whether it is legitimate for the Court of Appeal to use the platform of 'taking judicial notice' to enter into the non-legal thicket of theological questions or the tenets of comparative religions?*

3. *Whether the Court is entitled suo moto to embark upon a search for supportive or evidential material which does*

not form part of the appeal record to arrive at its decision?

4. *Whether the Court can rely in information gathered from internet research without first having determined the authoritative value of the source of that information or rely on internet research as evidence to determine what constitute the essential and integral part of the faith and practice of the Christians?*

5. *Whether the use of research independently carried out by a Judge and used as material on which the judgment was based without it first been offered for comment to the parties to the proceedings in breach of the principle of natural justice?'*

19. As is common knowledge, to succeed in an application for leave, the applicant bears the burden of satisfying the Court that the questions posed have crossed the threshold in Section 96 of the Courts of Judicature Act, 1964 (CJA). It is instructive to set out the relevant provisions of S.96 CJA, which read as follows:-

"96. 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

(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."

20. **Terengganu Forest Products v Cosco Container Lines Co. Ltd & Anor [2011] 1 MLJ 25** is the locus classicus on S.96 of the CJC, having put paid to the inconsistencies found in **Datuk Syed Kechik bin Syed Mohammad & Anor v The Board of Trustees of the Sabah Foundation & Ors & another**

application [1999] 1 MLJ 257 and **Joceline Tan Poh Choo & Ors v Muthusamy [2008] 6 MLJ 621.**

21. Thus the scope of the Applicant's leave question covers both limbs of Section 96(a) as well as Section 96(b).

22. It is instructive to also consider the basic prerequisites which an applicant needs to satisfy, before leave could be granted under S.96 of the CJA.

23. First, under S.96(a) of the CJA, the prerequisites are:-

    (i) That leave to appeal must be against the decision of the Court of Appeal;

    (ii) That the cause or matter must have been decided by the High Court exercising its original jurisdiction;

    (iii) That the question must involve a question of law which is of general principle not previously decided by the court in that it must be an issue of law of general principle to be decided for the first time [the first limb of S.96(a) of the CJA; or

(iv) Alternatively, it is a questions of importance upon which further argument and decision of this Court would be to public advantage [the second limb of S.96(a)].

24. The 2 limbs of Section 96(a) are to be read disjunctively. As regards Section 96(b), these relate to constitutional law questions.

25. Conversely, leave will normally not be given:-

(i) Where it merely involves interpretation of an agreement unless the Federal Court is satisfied that it is for the benefit of the trade or industry concerned;

(ii) The answer to the question is not abstract, academic or hypothetical;

(iii) Either or both parties are not interested in the result of the appeal.

26. Looking at the Proposed Leave Questions, it is apparent that they are grounded on the legal issues that have arisen from the Minister of Home Affair's ("the Minister") decision in the exercise of his power under the Printing Presses and Publication Act 1984

(the Act) which imposed a ban on the use of the word “Allah” in the Bahasa Malaysia edition of the Catholic weekly, the Herald on the ground of public order.

27. Thus the pith of this leave application is:-

That in imposing the condition he did, the question is whether the Minister’s declaration that he acted on public order or national security grounds precludes review, or whether the court has to be satisfied as to the reasonableness of this concern and of the materials on which he acted.

28. The determining factors of the “reasonableness” of the Minister’s decision is a constant refrain in this case. This of course leads to the question of proportionality and whether the balance between competing interests was considered at all by the Minister.

29. In reversing the High Court judgment, the Court of Appeal had applied a test which was termed as being “subjectively objective.” This contradiction in terms will be discussed latterly.

30. The Court of Appeal also made a finding that the word “Allah” is not an integral part of the faith and practice of Christianity.

31. More importantly, it is the Applicant's contention that there is considerable ambiguity today on the scope of the Court of Appeal's judgment. It was alleged by the Applicants that although the Minister's order was directed as a prohibition against the use of the word "Allah" only in the Bahasa Malaysia edition in the Herald, the terms of the Court of Appeal judgements and reasoning applied by the court seemed to have sanctioned a **general prohibition** against the use of the "Allah" word by members of the Christian community in Malaysia for their religious programmes. This belief is sparked by the holding of all 3 judgments, but largely adopting the reasoning of Mohd Zawawi Salleh JCA, that the use of the word "Allah" is not an essential and integral part of the Christian faith and would not therefore enjoy the protection of Article 11 (1) & (3) of the Federal Constitution.

32. Is this the effect of the judgment and if so, what would be its implications?

A scrutiny of the Court of Appeal judgment is thus incumbent, as it has wide ramifications, if true. All the questions posed in

PART A, when taken together can be condensed into one issue, that is what is the extent of the Minister's discretionary power and in its determination, what is the test to be applied; is it subjective or objective or a fusion of both as the Court of Appeal seemed to suggest?

33. As an adjunct to the above, it would be relevant to also ask:

(i) Which of the tests was actually applied in this case? and

(ii) Why is it critical to determine which of the tests was applied?

34. Again, it is imperative that these questions need to be articulated, since applying the wrong test would lead to far-reaching consequences in the sphere of judicial review.

35. However before getting to the pith of the issue, there are peripheral ones which are equally important. The first of these is the source of power issue.

THE SOURCE OF THE MINISTER'S POWER

36. What was the source of power under which the Minister imposed the conditions as stipulated in his 7.1.2009 letter including the impugned decision?

37. There seems to be some uncertainty in this regard. The Minister himself was reticent as to its source, whilst the Court of Appeal Judges were divergent.

38. The lead judgment of Mr. Justice Apandi Ali JCA (as his Lordship then was), relied on Section 26 of the Act, or the implied powers under Section 40 of the Interpretation Act, 1967 as being the source of the Minister's power.

39. Mr. Justice Abdul Aziz Rahim JCA however held that the power was to be found in Section 12 of the Act, together with the Form B conditions.

40. Given the uncertainty as to the source of power, in what is essentially a crucial decision made by the Minister to impose a prohibition on the use of a word by a religious body, it is important that the source of power be clarified and settled in clear terms by

this Court, for otherwise the Minister's exercise of power and the Court of Appeal's decision which affirmed it would be seriously challenged.

JUDICIAL REVIEW OF PROCESS ONLY?

41. The Court of Appeal's judgment which declared that judicial review is only concerned with the decision-making process and not the decision itself, is with respect, old hat.

42. The Malaysian Courts have long moved on since the pre-Rama Chandran (**R Rama Chandran v The Industrial Court of Malaysia & Anor [1997]**) days, when judicial review then permitted review only as regards the process and not the substance. Today, the concept of judicial review permits review of process and **substance** in determining the reasonableness of a decision by a public authority. (See **Ranjit Kaur v Hotel Excelsior [2010] 8 CLJ 629** and **Datuk Justin Jinggut V Pendaftar Pertubuhan [2012] 1 CLJ 825**).

43. The divergent approaches made by the Court of Appeal on this issue ought to be addressed too, by this court.

44. Leave should also be granted for the reason that the decision of the Court of Appeal in this case is at variance with the earlier decision of this court, dealing with the same provision of the Act, i.e. the case of **Dato' Syed Hamid Albar v Sisters in Islam [2012] 9 CLJ 297**. ("the Sisters in Islam case").

45. **Sisters in Islam** also involved a decision taken under the Printing Presses And Publication Act, on alleged public order grounds. The Court of Appeal quashed the Minister's "absolute" discretion to ban the book in question and held that the book could not be prejudicial to public order as it had been in circulation for 2 years before the Order to ban it.

46. It was said that the decision to ban the book was "such outrageous defiance of logic that it falls squarely within the meaning of Wednesbury reasonableness and of irrationality."

47. Based on the above, the Court of Appeal in **Sisters in Islam** had clearly applied the objective test in determining the exercise of Ministerial discretion as opposed to the "subjectively objective" test cast upon the Minister's exercise of power in this case.

48. What then is the test to be applied in determining the exercise of the Minister's discretionary power in cases involving national security or activities which would be prejudicial to public order?

THE SUBJECTIVE TEST

49. A good starting point would be to look at **Karam Singh v Menteri Dalam Negeri [1969] 2 MLJ 129**, where the **subjective test** was applied. For a good many years, this test found favour in our judicial system. **Karam Singh** had applied the case of **Liversidge v Anderson [1942] AC 206** and its companion case of **Greene v Secretary of State for Home Affairs [1942] AC 284** (even if the House of Lords preferred the strong dissenting judgment of Lord Atkin).

50. In the **Karam Singh** 'stable' of cases, the policy is that administrative decisions which are based on policy considerations and national security are not usually amenable to review by the courts, since it depends on the subjective satisfaction of the Minister.

51. This is apparent in **Liversidge v Anderson (supra)** and **Greene (supra)**, which concerned the discretion of the Secretary of State under Regulation 18B of the Defence (General) Regulations 1939, to make a detention order against any person whom the Secretary of State has "reasonable cause to believe" to be of hostile origin or associations or to have been recently concerned in acts prejudicial to the public safety or the defence of the realm.

52. The House of Lords adopted the subjective approach and held in both cases that the discretion under Regulation 18B is a matter for the executive discretion of the Secretary of State, and that where the Secretary of State acting in good faith makes an order in which he recites that he has reasonable cause for his belief, a **court of law cannot inquire whether in fact the Secretary of State had reasonable grounds for his belief**. Lord Atkin dissented, in preference for the **objective approach** and held that the Home Secretary had not been given an unconditional authority to detain.

(my emphasis)

53. On the local scene, **Karam Singh v Menteri Hal Ehwal Dalam Negeri Malaysia [1969] 2 MLJ 129**, contemplated the subjective satisfaction of the Minister and found that his "satisfaction" in

granting the order was not justiciable. Several cases such as **Kerajaan Malaysia & Ors v Nasharuddin Nasir [2000] 1 CLJ 81** followed the principle in **Karam Singh**. It found favour in other cases such a **Yeap Hock Seng v Menteri Hal Ehwal Dalam Negeri Malaysia [1975] 2 MLJ**. **Athappen a/l Arumugam v Menteri Hal Ehwal Dalam Negeri Malaysia [1984] 1 MLJ 67**, **Theresa Lim Chih Chin v Inspector General of Police [1988] 1 MLJ 293** and the Singapore case of **Lee Mau Seng v Minister for Home Affairs [1971-1975] SLR 135**.

54. It was clear in these cases that what was "national security" was left very much in the hands of those responsible for it. In other words, the **subjective** determination of the Minister/executive is non-justiciable.

55. However over the years, the willingness of courts to impose limits upon the Minster's discretion is seen in the early cases like **Padfield v Minister of Agriculture [1968] AC 997,** which matches the way in which they have frequently cut down the width of the discretion of local authorities.

56. This is especially apparent when state action (whether legislative or executive) infringes upon a right (especially fundamental rights), where it could be cut down to size, unless it shows three factors, i.e. that –

    (i) it has an objective that is sufficiently important to justify limiting the right in question;

    (ii) the measures designed by the relevant state action to meet its objective must have a rational nexus with that objective; and

    (iii) the means used by the relevant state action to infringe the right asserted must be proportionate to the object it seeks to achieve (per **Lord Steyn in R v Secretary of State for the Home Department ex parte Daly [2001] UKHZ 26**).

57. In other words, a decision may be set aside for unreasonableness. The difficulty of course, is to know when a decision may be said to be unreasonable.

58. The celebrated case of Associated **Provincial Picture House Ltd v Wednesbury Corporation [1948] 1 KB 223** needs no

introduction. Lord Greene MR clearly set out what is termed as the Wednesbury test – namely that a court may set aside a decision for unreasonableness only when the authority has come to a conclusion "so unreasonable that no reasonable authority could ever have come to it."

59. The judgment emphasised that the concept (of unreasonableness) is closely related to other grounds of review, such as irrelevant considerations, improper purposes and error of law.

60. In that connection, Lord Denning MR in **Pearlman v Keepers & Governors of Harrow School** said that the new rule should be that "no court or tribunal has any jurisdiction to make an error of law on which the decision of the case depends."

61. In supporting this view, Lord Diplock said that:-

*"… the breakthrough made by Anisminic (**Anisminic Ltd v Foreign Compensation Commission [1969] 2 AC 147**) was that, as respect administrative tribunals and authorities, the old distinction between errors of law that went to jurisdiction and errors of law that did not, was for practical purposes, abolished.*

*(**R v Monopolis and Merger Commission ex p South Yorkshire Transport Ltd [1993] 1 All ER 289**."*

62. Over the years, the issue of Judicial Review has become a hard-edged question.

63. This is because the reliance on error of law as a ground for controlling discretion, places the courts in a position of strength, vis-à-vis the administration, since it is peculiarly for the courts to identify errors of law. As case laws have shown, error of law is a sufficiently flexible concept to enable the judges, if they feel it incumbent, to make a very close scrutiny of the reasons for a decision and the facts on which it was based.

64. This was manifested in no uncertain terms by Raja Azlan Shah CJ (as His Royal Highness then was) in the leading case on the subject – **Pengarah Tanah dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd [1979] 1 MLJ 135**. ("Sri Lempah")

65. His Lordship explained the principle very clearly when he said that:-

"... *On principle and authority the discretionary power to impose such conditions 'as they think fit' is not an uncontrolled discretion to impose whatever conditions they like. In exercising their discretion, the planning authorities must, to paraphrase the words of Lord Greene MR in the Wednesbury case, have regard to all relevant considerations and disregard all improper consideration, and they must produce a result which does not offend against common sense …"*

66. Thus when a person such as a Minister, is entrusted with a power of discretion, he is under an obligation to exercise it reasonably and in accordance with the terms of the relevant provision of the statute that confers him the power or discretion. This principle is applied with vigour even when the language of the statutory power is couched in wide terms.

67. Possibly, the turning point came about when the Federal Court decided in **Merdeka University Berhad v Government of Malaysia [1982] 2 MLJ 243** ("the Merdeka University" case), that "it is insufficient if the Minister thought that he had reasonable grounds to be satisfied that the Appellant had acted in a manner prejudicial to public order. The question that a court must ask itself

is whether a reasonable Minister appraised of the material set out in the statement of facts would objectively be satisfied that the actions of the appellant were prejudicial to public order."

In other words, this was the beginning of the application of the "objective" test.

68. It is clear that courts from then on were prepared to ascertain whether the satisfaction of the Minister has been properly exercised in law.

69. It is appropriate at this stage to cite the antiquated case of **Ex parte Sim Soo Koon [1915] SSLR 2** as a reminder of what "discretion" means. Earnshaw J, referred to **Sharp v Wakefield [1891] AC 173**, which held that *"discretion means, when it is said that something is to be done within the discretion of the authorities, that something is to be done according to the rules of reason and justice, not according to private opinion, according to law and not humour. It is to be not arbitrary, vague and fanciful, but legal and regular. And it must be exercised within the limit to which an honest man competent to the discharge of his office ought to confine himself."*

70. This salutary principle appeared to be resurrected in the cases after **Merdeka University (supra)**.

71. If the oft-quoted reminder of Raja Azlan Shah FCJ in **Sri Lempah (supra)** can be rephrased, it is a truism that “every legal power has legal limits, for otherwise there is dictatorship”.

72. Thus authorities such as **Mohamad Ezam bin Mohd Noor v Ketua Polis Negara & Other appeals [2002] 4 MLJ 449**, **Sivarasa Rasiah v Badan Peguam Malaysia & Anor [2010] 2 MLJ 333**, and in recent times **Darma Suria Risman Saleh v Menteri Dalam Negeri Malaysia & Ors [2010] 1 CLJ 300**, **Dato’ Seri Syed Hamid Jaafar Albar v Sisters in Islam Forum [2012] 6 AMR** (Sisters case), **Mkini Dotcom Sdn Bhd v Ketua Setiausaha Dalam Negeri [2013] 6 AMR 668** and **Dato’ Ambiga Sreenevasan & 13 Ors v Menteri Dalam Negeri**, all applied the objective test.

73. Meanwhile across the causeway, the leading case in Singapore which applied the objective case is that of **Chng Suan Tze v Minister for Home Affairs [1998] SLR 525**. This case is of particular significance because it relates to the interpretation of

Section 8 of the Singapore Internal Security Act, where the Minister's power (like our erstwhile ISA) was couched in subjective terms. Yet the Singapore Court of Appeal found that –

*"… it is the **objective test** that is applicable to the review of the exercise of discretion under SS 8 and 10. In our judgment, the time has come for us to recognise that the subjective test, in respect of SS8 and 10 of the ISA can no longer be supported …"*

74. Alas, the euphoria was shortlived. On 26 and 28 January 1989, Singapore passed the Constitution of the Republic of Singapore (Amendment) Bill and the ISA (Amendment) Bill to restore the decision in **Lee Mau Seng v Minister of Home Affairs, Singapore [1971] 2 MLJ 137**, which applied the subjective test to S.8 of the ISA.

75. But apart from this Constitutional and Legislative amendment, the objective test remains good law in Singapore and the following decisions have continued to reaffirm the objective test. (See **Yong Vui Kong v AG [2011] SGCA 9**; **Kamal Jit Singh v Minister for Home Affairs [1992] 3 SLR (R) 352; Re Wong Sin Yee [2007] 4 SLR (R) 679; Tan Gek Neo Jessie v Minister of Finance [1991] SGHC**.

76. It is time to examine our courts' approach in determining cases which are closely connected and relevant to this case. Two cases stood out. They are:-

(i) **Darma Suria Risman Saleh v Menteri Dalam Negeri (supra)**, and

(ii) **Dato' Seri Syed Hamid bin Syed Jaafar Albar v SIS Forum Malaysia (supra)** – (**the 'Sisters in Islam case'**)

77. Beginning with the case of **Darma Suria (supra)**, it is clear that there, the Federal Court settled for the objective test, even if Section 4(1) of the **Emergency (Public Order & Prevention of Crime) Ordinance 5, 1969** was couched in subjective terms. Section 4(1) began thus:-

"If the Minister is satisfied … "

78. The Federal Court in **Darma Suria (supra)** referred to the decision in **Merdeka University (supra)**, which had a similar subjective element in its provision, where S.6(1) of the 1971 Act reads:-

"… If the Yang di-Pertuan Agong is satisfied …"

79. In **Sisters in Islam**, the Court of Appeal considered Section 7(1) of the Printing Presses and Publication Act 1984 and examined the substance of the Minister's "absolute discretion" banning the Respondent's book entitled "Muslim Women and the Challenges of Islamic Extremism."

80. Although there were no submissions made as to which test was applied, the Court of Appeal **quashed** the Minister's discretion to ban the book because the Court found that the book could not be prejudicial to public order as it had been in circulation for 2 years before the Order to ban it.

81. It is worth repeating that the decision to ban the book was "such an outrageous defiance of logic that it falls squarely within the meaning of Wednesbury unreasonableness, and of irrationality." Wednesbury unreasonableness is 'a decision which is so outrageous in its defiance of logic or accepted moral standards that no sensible person who has applied his mind to the question to be decided could have arrived at it'. See **Sabah Forest Industries Bhd v Industrial Court Malaysia [2013] 2 AMR 238**.

82. The same words or its substance i.e. “no sensible person who has applied his mind to the question to be decided could have arrived at it” are found in Suffian LP’s judgment in **Merdeka University (supra)**.

83. From this analysis, it can safely be said that Malaysian Courts have been applying the objective test when reviewing Ministerial or an inferior tribunal’s decision even if they do not express it, since the language of Wednesbury unreasonableness is similar to what Suffian LP said in **Merdeka University**.

84. Reverting to **Sisters in Islam**, it is arguable that the Court of Appeal there applied an objective test to quash the Minister’s decision banning the book, because it looked at the facts objectively before concluding that no reasonable Minister would have banned the book.

85. The last case which requires scrutiny is the case of **Arumugam a/l Kalimuthu v Menteri Keselamatan Dalam Negeri & 2 Ors [2013] 4 AMR 289** (“Arumugam”).

86. In **Arumugam (supra)**, the challenge was to the exercise of the Minister's power, under Section 7(1) of the Printing Presses and Publication Act, 1984. Section 7(1) reads:-

"… If the Minister is satisfied … he may in his absolute discretion by order …"

87. The Court of Appeal in **Arumugam** held that the decision of the Minister to ban the book was neither so outrageous that it defied logic or against any accepted moral standards *"that the action taken was in the interest of national security, including public order for which the Minister bore responsibility and alone had access to sources of information and qualify it to decide to take the necessary action …"*

88. Further, the Court of Appeal in **Arumugam** had this to say –

"… It is our considered view that the legal issue here is not as simplistic as proposed by the appellant. It is not a clear case of objective test or subjective test. ***It is a fusion of both!*** *"*

(my emphasis)

89. This pronouncement does not synchronise with its earlier one where the Court found that the reference to Section 7(1) was to the Minister's "satisfaction" and in "his absolute discretion". This was a clear signal that the Minister's power is to be exercised personally based on his subjective satisfaction. Therefore the Court of Appeal in **Arumugam** primarily applied the **subjective test** though the Court seemed to suggest the existence of an element of objectivity. This hybrid is certainly unusual.

(my emphasis)

90. Against this backdrop, we return to the question at the beginning of this judgment i.e. what was the actual test which was applied by the Court of Appeal in **this case**?

91. In this case, a scrutiny of the lead judgment of the Court of Appeal was made. The learned judge stated that:-

"(28) On the issue of the exercise of discretion in imposing the condition of prohibiting the usage of the word "Allah" by the respondent ….. I could not agree more than what was decided by this court in ***Arumugam a/l Kalimuthu v Menteri Keselamatan Dalam Negeri & 2 Ors [2013] 4 AMR 289; [2013] 5 MLJ 174."***

"(29) …. 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****. * 375 This is in line with the rationale in the Federal Court decision in* ***Darma Suria Risman Saleh v Menteri Dalam Negeri, Malaysia & Ors [2010] 3 MLJ.****"* (my emphasis)

92. Further down in the body of the judgment, His Lordship stated that:-

"[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 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 …***"* (my emphasis)

"[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 oft-quoted case of ***CCSU v***

***Minister of the Civil Service [1984] 3 All ER 935**, it is my considered finding that the Minister had not acted in any manner or way that merit judicial interference on his impugned decisions."*

*"[49] … Although the test under the written law is **subjective**, there are sufficient evidence to show that such decision was derived by considering all facts and circumstances in an objective manner."* (my emphasis)

93. The above paragraph is a contradiction in terms – because if the Minister's "subjective satisfaction" is taken, then the need to show sufficient evidence that the decision was derived at by considering all fact and circumstances in an objective manner, does not arise.

94. Firstly a careful reading of the above excerpts of the judgment explicitly showed that the Court of Appeal in this case primarily applied the subjective test. His Lordship was in agreement with the decision in **Arumugam** (which although it used the subjective test had suggested a fusion of tests in its approach).

95. However, the learned judge went on to say that the appraisal of the facts was done by way of it being “subjectively objective” and that this is in line with the rationale in **Darma Suria**.

96. The entire paragraph weighs heavily; this is because **Arumugam** clearly opted for the subjective/objective test, whereas **Darma Suria** applied the objective test in full force. How could it then be said by the Court of Appeal that in this case the reference to **Arumugam** is correct and that it is “in line with **Darma Suria**?”

97. In other words, could both tests in **Arumugam** and **Darma Suria** be applied simultaneously? The conundrum is complete when the term “subjectively objective” was cast on the test applicable.

98. The term “subjectively objective” is paradoxical since they are two different concepts which negates one another.

99. Has the Court of Appeal in this case gone on a frolic of its own in applying this hybrid test? If the claim is that the Court of Appeal had in actual fact applied the objective test in this case even though it had attached a “subjective objective” label to define it, I believe this will cause further confusion. A close reading of the judgment as a whole does not lend itself to an objective

reasoning being applied. In fact the contrary seems to be the position. In other words, the form and substance of the judgment do not add up. It is clearly at odds with the ratio in **Darma Suria** and by the same token, the Court's endorsement of **Arumugam** engenders uncertainty.

100. Since the words in **Darma Suria** in Section 4(1) that is:-

"… If the Minister is satisfied …"

*a*re similar to the words in Section 7(1) of the Printing Presses and Publication Act in **Arumugam**, the Court of Appeal in this case should have therefore followed **Darma Suria** and not embark on its own interpretation. With respect, the Court of Appeal in this case and in **Arumugam** should indicate why it departed from **Darma Suria**, given the similar statutory language and circumstances in the two cases.

101. This confusion would be straightened out when parties are given the opportunity to submit if leave is granted.

102. The next question is: What is the significance of determining the applicable test?

The answer is simply this. It is critical that this court can determine whether the Minister's exercise of discretionary power is open to scrutiny or is the court precluded from it.

103. If the test applied is a subjective test and thus judicial review is denied, is this desirable when the Minister grounded his decision on reasons of public order?

104. In so doing, did the Minister give reasons for the prohibition? According to the learned Senior Federal Counsel (SFC) in such situations the Minister has the final say. In other words, he need not give his reasons. The SFC relied heavily on the case of **Council of Civil Service Unions & Ors v Minister of Civil Service [1985] 1 AC 374** (the CCSU case) to support her contention. With respect, even if cases involving national security and public order are within the Minister's purview, the Minister's exercise of power is certainly not completely beyond the court's competence. It is incumbent for the Minister to give reasons or offer evidence that the exercise of his power is legal and reasonable.

105. The mixed signals given by courts in England and Wales over the deference given to the executive on matters of national security thus restricting judicial interference, was put to rest somewhat, in the case of **Lord Alton of Liverpool v Secretary of State for the Home Department [2008] EWCA CIV 443**.

106. At the Court of Appeal, the Court did not accept the argument that deference should be given to the Secretary of State and instead, the appropriate course was to adopt an intense and detailed scrutiny.

107. In fact Lord Steyn in a Judicial Studies Board lecture entitled "Deference: "A Tangled Story" 2004, inter alia, said that:-

"… the courts may properly acknowledge their own institutional limitations. In doing so, however, they should guard against their own institutional limitations. In doing so, however, they should guard against a presumption that matters of public interest are outside their competence and be aware that they are now the ultimate arbitrators (although not ultimate guarantors) of the necessary qualities of a democracy in which the popular will is no longer always expected to prevail."

108. In fact Lord Steyn's views are shared by Lord Rodger in **A (FC) & Others v Secretary of State for the Home Department [2004] UKHL 56** where he observed that:-

"On a broader view too, scrutiny by the courts is appropriate. There is always a danger that, by its very nature, a concern for national security may bring form measures that are not objectively justified. Sometimes, of course, as with the Reichstag fire, national security can be used as a pretext for repressive measures that are really taken for other reasons. There is no question of that in this case: it is accepted that the measures were adopted in good faith."

109. Can the same approach be adopted in our courts? As had been alluded to above, the judicial trend has been shown by our courts in cases such as **Mohamad Ezam v Ketua Polis Nefgara (supra)**, **Darma Suria (supra)**, **JP Berthelsen v DG Immigration [1987] 1 MLJ 134**, that "*no reliance can be placed on a mere ipse dixit of the first respondent (the DG) and in any event adequate evidence from responsible and authorities sources would be necessary.*"

(per Abdoolcader SCJ)

110. In this case the Applicant's grounds of challenge as narrated in paragraph 7 of this judgment, spoke mainly of violation of its constitutional and legal rights.

111. The question is whether the Minister's declaration that he acted on public order or national security grounds, and the alleged lack or absence of material before the court affects the proper balance between competing interests which the Court of Appeal in this case has to maintain.

112. In **Sisters in Islam**, a measured approach was taken by the Court.

113. The Court in **Sisters in Islam** stated that although the Minister's discretion was described as being "absolute", it must still stand the test of whether it has been properly exercised in law, since the question whether the decision has been taken on the ground of public order is a question of law.

114. In **Sisters in Islam** and to some extent in this case, it appears that belated reasons were taken. The court in **Sisters in Islam**, held that on the facts and evidence before it, there was nothing

to support the Minister's decision. The court went on to say that "to conclude that the impugned book creates a public order issue is something that cannot stand objective scrutiny. To that extent an error of law is established on the facts."

115. Likewise, in this case, based on the facts and evidence, can it be said that the Minister had applied procedural and substantive fairness and acted with proportionality and exercised his discretion within the statutory purpose of the Act?

116. In view of these compelling dynamics, a need arises for this court to clarify them in a proper forum such that the merits will have their time of day.

HAS THE APPLICANT PASSED THE THRESHOLD TEST FOR LEAVE

PART A QUESTIONS

117. In my view, it has. It is clear that the issues which have come up for consideration are of public importance within the meaning of Section 96(a). In fact, they are palpably so.

118. A decision on these issues where this court reviews the judgment of the Court of Appeal for their correctness on every aspect would surely be momentous and would be to great public advantage, given the fact that the issues in this application are fraught with critical questions of pubic importance.

119. The Federal Court in restating the principles in **Datuk Syed Kechik (supra)**, speaking through Zaki Tun Azmi CJ (as His Lordship then was), in **Terengganu Forest (supra)**, explained the application of S.96(a) as follows:-

"To obtain leave it must be shown that it falls under either of the two limbs of S.96(a) but they can also fall under both limbs … Under the 1st limb, that decision by the Court of Appeal must however have raised a question of law which is of general principle not previously decided by this court … Alternatively the applicant must show that the decision would be to public advantage."

120. If leave is required in the second limbs of S.96(a), the novelty of the issue need not be shown because the limb requires further argument on the issue. So if further argument is required it

cannot be a novelty issue. The applicant has to show that it is for **public advantage**.

121. A question that is of public advantage will have a favourable consideration.

122. Even if it is clear and obvious that leave is not to be given as a matter of course, in this case it should look at the conflicting and **inconsistent decisions** by the Court of Appeal, Federal Court and High Court on several issues as alluded to above:-

(a) Thus it is my view that the questions of law are of importance and upon which further argument and a decision of the Federal Court would be to public advantage;

(b) The Federal Court would be able to give some clarify to the existing state of the law;

(c) The Federal Court will have the opportunity to **restate** the law. [82]-86]

123. Interestingly **Datuk Syed Kechik (supra)** accepts that a well established principle may be brought to the Federal Court if such

an appeal serves to clarify or refine the principle so as to make it apply to other situations in the future "… and on which authorities guidance of the Federal Court would be of great utility …"

PART B

124. I shall refrain from answering the questions raised in this PART as in my view, the questions in Part A themselves offer enough justification for leave being granted under Section 96(a) of the Court of Judicature Act, 1984. In any case some of the questions here do overlap and they can then be taken at the appeal stage.

PART C

125. Another pertinent issue which warrants leave being granted is the issue of the pronouncement on matters of theology both in the High Court and the Court of Appeal (Part C). To put in a nutshell, some issues of theology, religious and ecclesiastical concerns are beyond the reach of this court. However, the religious issues before this Court and the Courts below are not of the same ilk as those found in various authorities such as **Meor Atiqulrahman bin Ishak (an infant, by his guardian ad litem, Syed Ahmad Johari bin Syed Mohd) & Ors v Fatimah binti**

Sihi & Ors [2006] 4 MLJ 605, and **Subashini Rajasingam v Saravanan Thangathoray & Other Appeals [2208] 2 CLJ 1** and other related cases. This is because the subject matter of the above named cases are well within the court's competence and are thus justiciable. [89-91].

126. In short this court does not decline to decide cases relating to other normal legal issues such as commence or banking laws, or civil rights and the like, just because there is a religious element in them. It all depends on the facts of each case.

127. However in this case, the subject matter has escalated to a worrying level. The learned judges in the court below ought to have confined themselves strictly to the legal issues raised, since the question of the truth or otherwise of the disputed tenets of religious belief and faith, the correctness or otherwise of religious practices and inward beliefs and allegianous, are all beyond the competence of judges of fact and law, as we are. The questions are clearly non justiciable because they are neither questions of law nor are they questions of fact or factual issues capable of proof in a court of law by admissible evidence. (See **Mohinder**

Singh Khaira & Ors v Daljit Singh Shergill & Ors [2012] EWCA Civ 983.

128. As is well known, judicial method is equipped to handle only with objectively ascertainable facts, directly or by inference and from evidence which is probative. In my view, judges should not overreach themselves for we are not omniscient.

129. The alleged historical or other facts taken from affidavit evidence and the internet are in themselves unverified, uncorroborated and therefore inadmissible. As had been said, plausibility should not be mistaken for veracity.

130. Thus my view is that leave should be granted for the questions in Part C under S.96(a) for it would be to public advantage that the issues are ventilated and the matter placed in their correct and proper perspectives for purposes of future guidance.

131. Finally I really and sincerely take the position that in this case, the voice of Reason should prevail and all parties must exercise restraint and uphold the tenets of their respective religious beliefs and display tolerance and graciousness to each other. All parties should stay calm and exist in peace and harmony in our beloved

country. It is imperative that the goodwill that all races and religious denominations posses be brought to the negotiating table and the matter be resolved amicably.

132. The wise words of Lord Justice Mummery in **Mohinder Singh Khaira (supra)** may be heeded. His Lordship observed that:-

"… the parties here would be well advised to engage in some form of alternative resolution procedure."

CONCLUSION

133. For the reasons above, the Applicant has satisfied the requirements for leave to be granted under Section 96(a) of the CJA.

134. Finally as have always been said, judicial review of administrative action is an essential process if the rule of law is to mean anything at all.

135. In this, it is only right that the apex court should have the last say on the subject. Moreover, issues of public importance that this case has thrown up cannot be understated. They have to be

addressed and resolved, for otherwise the uncertain position of various legal principles in the Court of Appeal remain unclarified and uncorrected.

136. Thus leave to appeal should be granted on the proposed questions in Part A and C as prayed for in Enclosure 2(a) and consequential orders should follow.

137. There should be no order as to costs.

Dated: 23rd June, 2014.

(JUSTICE ZAINUN ALI)
Federal Court Judge
Malaysia.

Date of hearing : 5 Mac 2014.

Counsel For the Applicant:	Cyprus V Das, Porres Royan, Gurubachan Singh Johal, Philip Koh Tong Ngee, S. Selvarajah, Benjamin Dawson
Solicitors For the Applicant:	Messrs. Fernandez & Selvarajah Advocates & Solicitors.
Counsel For the 1st and 2nd Respondent :	Suzana Atan, Dr. Arik Sanusi bin Yeop Johari, Munahyaza bt. Mustafa, Shamsul Bolhassan & Andi Razalijaya bin A Dadi (SFC)
Solicitors for the 1st and 2nd Respondents:	Attorney General of Malaysia Attorney General's Chambers No. 45, Persiaran Perdana Presint 4, 62100 Putrajaya.
Counsel For the 3rd Respondent:	Hj. Sulaiman bin Abdullah, Zainul Rijal bin Abu Bakar & Wan Mohd Haidi bin Wan Jusoh.
Solicitors For the 3rd Respondent:	Messrs Zainul Rijal Talha & Amir Advocates & Solicitors
Counsel For the 4th Respondent:	Mubashir bin Mansor, Abdul Rahim bin Sinwan & Abdul Halim bin Bahari.
Solicitor For the 4th Respondent:	Messrs Azra & Associates Advocates & Solicitors.

Counsel For the 5th Respondent: Mohd Adli bin Ithnin & Nur Syazwani bt. Rosli

Solicitors For the 5th Respondent: Messrs Adli & Co.
Advocates & Solicitors.

Counsel For the 6th Respondent: Ikbal bin Salam & Azril bin Mohd Amin

Solicitors For the 6th Respondent: Messrs Ikbal Salam & Associates
Advocates & Solicitors.

Counsel For the 7th Respondent: Nawan bt. Harun @ Abdul Rahman & Siti Razasah bt. Abd. Razak.

Solicitors For the 7th Respondent: Tetuan Omayah Nawal & Partners
Advocates & Solicitors.

Counsel For the 8th Respondent: Mohamed Haniff bin Khatri Abdulla, Mohd Tajuddin bin Abd Razak & Ridha Abdah bin Subri.

Solicitors For the 8th Respondent: Messrs Tajuddin Razak
Advocates & Solicitors.

Counsel For the 9th Respondent: Dr. Abdul Aziz bin Abdul Rahma & Mohd Fasha bin Musthafa

Solicitors For the 9th Respondent: Messrs Azra & Associates
Advocates & Solicitors.