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

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

Dalam perkara keputusan Responden-Responden bertarikh 7.1.2009 yang menyatakan bahawa Permit Penerbitan Pemohon untuk tempoh 1.1.2009 hingga 31.12.2009 adalah tertakluk kepada syarat bahawa Pemohon dilarang menggunakan istilah/perkataan "Allah" dalam "Herald – The Catholic Weekly" sehingga Mahkamah memutuskan perkara tersebut

Dan

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

Dan

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

Dan

Dalam perkara Roman Catholic Bishops (Incorporation) Act 1957.

ANTARA

TITULAR ROMAN CATHOLIC ARCHBISHOP OF KUALA LUMPUR	... PEMOHON

DAN

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

JUDGMENT

1. The Applicant, the Titular Roman Catholic Archbishop of Kuala Lumpur, is the publisher of "Herald - the Catholic Weekly" ('the said publication") is published on behalf of the Bishops of Peninsular Malaysia pursuant to a publication permit issued by the 1st Respondent, the Minister of Home Affairs under the Printing Presses and Publications Act 1984 (Act 301). The 2nd Respondent is the Government of Malaysia.

2. On 8.1.2009 the Applicant received by way of facsimile a letter dated 7.1.2009 (Exh. MP-25) signed by one Che Din bin Yusoh on behalf of the KSU Kementerian Dalam Negeri cancelling a previous letter dated 30.12.2008 (Exh.MP-22) and approving the publication permit subject to the following conditions:

"(i) Permohonan penerbitan dalam Bahasa Melayu adalah dibenarkan, namun demikian, penggunaan kalimah

"ALLAH" adalah dilarang sehingga mahkamah membuat keputusan mengenai perkara tersebut.

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

3. The Applicant being dissatisfied with the impugned decision dated 7.1.2009 vide an application for judicial review No.R1-25-28-2009 dated 16.2.2009 (Encl.1) sought leave pursuant to O.53 r.3(1) of the Rules of the High Court 1980 ("the RHC") for the following relief:

(1) for an Order of Certiorari to quash the decision of the Respondents dated 7.1.2009 that the Applicant's Publication Permit for the period 1.1.2009 until 31.12.2009 is subject to the condition that the Applicant is prohibited from using the word "Allah" in "Herald – The Catholic Weekly" pending the Court's determination of the matter;

(2) Jointly or in the alternative, for the following declarations:

(i) that the decision of the Respondents dated 7.1.2009 that the Applicant's publication permit for the period 1.1.2009 until 31.12.2009 is subject to the condition that the Applicant is prohibited from using the word "Allah" in "Herald – The Catholic Weekly" pending the Court's determination of the matter is illegal and null and void;

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

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

(iv) that pursuant to Article 10 of the Federal Constitution the Applicant has the constitutional right to use the word "Allah" in "Herald – The Catholic Weekly" in the exercise of the Applicant's right to freedom of speech and expression";

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

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

(vii) that the Printing Presses and Publications Act 1984 does not empower and/or authorise the Respondents to prohibit the Applicant from using the word "Allah" in "Herald – The Catholic Weekly";

(viii) that the decision of the Respondents dated 7.1.2009 that the Applicant's publication permit for the period 1.1.2009 until 31.12.2009 is subject to the condition that the Applicant is prohibited from using the word "Allah" in "Herald – The Catholic Weekly" pending the Court's determination of the matter is *ultra vires* the Printing Presses and Publications Act 1984; and

(ix) that the word "Allah" is not exclusive to the religion of Islam.

(3) An Order for stay of the decision of the Respondents dated 7.1.2009 that the Applicant's publication permit for the period 1.1.2009 until 31.12.2009 is subject to the condition that the Applicant is prohibited from using the word "Allah" in "Herald – The Catholic Weekly" pending the Court's determination of the matter and/or any or all actions or proceedings arising from the said decision pending determination of this Application or further order;

(4) Costs in the cause; and

(5) Any further and/or other relief that this Honourable Court may deem fit to grant.

3.1 The application for judicial review is supported by the Affidavit of Tan Sri Datuk Murphy Nicholas Xavier a/l Pakiam dated 16.1.2009 (Encl.3) and the Affidavit of Che Din bin Yusoh affirmed on 26.5.2009 (Encl. 9)(relied on by the Applicant by a Notice of Intention to Use Affidavit dated 1.7.2009 (Encl.15). The Respondents opposed the application vide the Affidavit of the 1st Respondent affirmed on 6.7.2009 (Encl.17).

4. Learned leading Counsel for the Applicant, Mr. Porres Royan informed the Court that Encl.1 was filed to obviate any objection that the proceeding in an earlier application No.R1 -25-73-08 be rendered academic. On 24.4.2009 the Court granted leave after it was informed the Attorney-General's Chambers had no objection to the leave application as the Court had in an earlier application No.R1-25-73-08 (reported in [2008] 9 CLJ 503) involving a similar permit application granted leave.

5. Encl.7 is the substantive application for judicial review has been fixed for hearing on 14.12.2009 together with the issue on non-justiciability as the Applicant has yet to make a Reply submission and to expedite proceedings after taking into consideration the observation of the Rt. Honourable CJ Malaysia Zaki Tun Azmi at pp. 312-313 of **Majlis Agama Islam Selangor v. Bong Boon Chuen & Ors. [2009] 6 MLJ 307**. For completeness, the issue of non-justiciability was taken up earlier by the Interveners, the Majlis Agama Islam (MAI) and Malaysian Chinese Muslim Association (MACMA) who became interveners by the Order of Court made on 3.8.2009 and which was then set aside by Order of the Court made on 11.11.2009.

I had earlier on 3.8.2009(after granting the Order for intervention) directed that the issue of non-justiciability be tried as a preliminary point upon an oral application made by the Interveners.

5.1 The learned SFC, Dato' Kamaluddin on behalf of the 1st and 2nd Respondents expressed they were in full agreement with the Written Submission of the Interveners dated 21.8.2009 (Encl.62) made on behalf of the MAI Pulau Pinang, Majlis Agama Islam dan Adat Melayu Terengganu and Perak and he supplemented it orally whilst Tuan Hj. Sulaiman on behalf of MAI Wilayah Persekutuan likewise adopted Encl.62 and orally added to it. The Applicant has yet to make a Reply submission on the return date (14.9.2009) as other intervening events occurred (I shall advert to the non-justiciability issue at the appropriate time).

6. The Court has considered the Written Submissions of the Applicant dated 30.11.2009, Encl.79- substantive judicial review, Encl. 80- Applicant's Reply Submission to the then 4th,5th and 7th Respondents/ the then Interveners(MAI Pulau Pinang, Terengganu and Perak), Encl.82 - Applicant's Further Submission to the Summary of the 1st and 2nd Respondents together with the Applicant's Bundles of Authorities (Encls. 81,83 and 85) and the Written Submission of the Respondents dated 14.11.2009 and Supplemental Written Submission (Encls.104 and 104A respectively) and the Respondents' Bundle of Authorities Vols.1 to 3 (Encls.105(1) to (3) respectively.) The Court's findings are the following.

7. As to the grounds upon which any person who is adversely affected by the decision of any public authority for purposes of O.53 r.2(4) of the RHC can canvass in seeking judicial review, the

Applicant has referred to the oft-cited House of Lords case of **Council of Civil Service Unions & Ors. v. Minister For The Civil Service[1985]1 A.C.374** ("CCSU") (also relied on by the Respondents) where the principles enunciated therein was followed in **Majlis Perbandaran Pulau Pinang**(supra)(p.124). In **CCSU** (supra) at pp.410-411 Lord Diplock apart from stating further heads upon which the grounds whereby administrative action is amenable to judicial review may develop including the principle of proportionality (recognised in the administrative law of several members of the European Economic Community) opined -

> "one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call "illegality," the second "irrationality" and the third "procedural impropriety."".

8. The grounds of challenge in this application for judicial review are that the Respondents –

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

(b) asked the wrong questions in the decision making process;

(c) took into account irrelevant considerations;

(d) omitted to take into account relevant considerations;

(e) 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;

(f) 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;

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

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

(i) acted *ultra vires* the Printing Presses and Publication Act 1984;

(j) imposed conditions on the Applicant which are oppressive and onerous; and

(k) acted mala fide.

8.1 Thus broadly, the Applicant seeks to challenge the impugned decision of the Minister (1st Respondent) under the heads of illegality, unconstitutionality, "Wednesbury unreasonableness" and ultra vires the Act.

9. Basically the 1st Respondent sought to justify his decision as follows:

(i) "... Larangan yang dikenakan hanyalah berhubung penggunaan kalimah Allah di dalam penerbitan majalah tersebut yang bertujuan untuk memastikan tidak berlakunya kekeliruan agama yang boleh mengancam keselamatan dan ketenteraman awam serta menimbulkan sensitiviti keagamaan di Negara ini"(paragraphs 25(sic)(should read as 6,23 and 46 of 1st Respondent's Affidavit);

(ii) "Larangan yang dikenakan adalah kepada penggunaan kalimah "Allah" di dalam penerbitan majalah tersebut kerana kalimah "Allah" di dalam penerbitan majalah tersebut kerana kalimah "Allah" secara matannya adalah merujuk kepada Tuhan Yang Satu bagi penganut agama Islam sebagaimana termaktub di dalam Al-Quran iaitu dalam surah Al-Ikhlas"(paragraphs 28.2 and 40.1 of 1st Respondent's Affidavit);

(iii) "... kelulusan permit penerbitan tersebut adalah tertakluk kepada syarat dan garis panduan penerbitan khususnya perenggan 4.1.10 yang jelas memperuntukkan bahawa penerbitan agama selain daripada agama Islam dilarang menggunakan istilah khusus agama Islam iaitu "Allah", "Baitullah", "Solat" dan "Kaabah"(paragraph 33 of 1st Respondent's Affidavit);

(iv) "... perlanggaran peruntukkan Enakmen Kawalan dan Sekatan Pengembangan Agama Bukan Islam Kepada Orang Islam (Negeri-Negeri) (paragraph 39 of 1st Respondent's Affidavit);

(v) "... terdapat perkataan alternatif lain yang Pemohon boleh gunakan kerana dari segi terjemahan, adalah jelas bahawa tiada sebarang kamus yang diiktiraf yang mendefinasikan perkataan "God" sebagai Allah dalam Bahasa Melayu(paragraph 40.2 of 1st Respondent's Affidavit);

(vi) "... keputusan tersebut adalah sah dan munasabah sebagaimana yang diperuntukkan oleh **polisi kerajaan** dan undang-undang terpakai termasuk peruntukan Enakmen Kawalan dan Sekatan Pengembangan Agama

Bukan Islam Kepada Orang Islam (Negeri-Negeri)"(paragraph 41 of 1st Respondent's Affidavit);

(vii) "... dalam hal perkara penerbitan, Responden Pertama mempunyai bidangkuasa di bawah peruntukan undang-undang untuk mengenakan apa-apa syarat kepada permit penerbitan sebagaimana yang difikirkan perlu dan wajar dan sebagaimana **arahan kerajaan**"(paragraph 42 of 1st Respondent's Affidavit);

(viii) "... kalimah Allah adalah nama khas bagi Tuhan Yang Maha Esa bagi penganut agama Islam dan ini jelas termaktub di dalam Al-Quran dan dimartabatkan di dalam Perlembagaan Persekutuan."(paragraph 45 of 1st Respondent's Affidavit); and

(ix) "... di kalangan rakyat Malaysia, kalimah "Allah" secara matannya merujuk kepada Tuhan Yang Maha Esa bagi penganut agama Islam." (paragraph 46 of 1st Respondent's Affidavit).

10. The learned SFC, Dato' Kamaludin submitted by virtue of rule 3 of the Printing Presses and Publications (Licenses and Permits) Rules 1983(sic-should read as 1984) (P.U(A) 305/84)("the 1994 Rules") read together with ss. 6 and 26 of the Printing Presses and Publications Act 1984 ("the Act"), the decision made by the 1st Respondent is legal and in accordance with the law and the 1st Respondent may attach any conditions which he deemed fit.

10.1 S.6 of the Act provides (the material part) -

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

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

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

10.2 S.26 of the Act (material parts) provides –

"(1) The Minister may from time to time make rules to carry out the purposes of this Act.

(2) Without prejudice to the generality of the powers conferred by subsection (1), such rules may provide for-

(a) ...

(b) ...

(c) ...

(d) The procedure for application of, the fees for and **the conditions to be attached to, a** licence or **permit,** the payment of a deposit upon the issue of a licence or permit and the circumstances in which the deposit may be forfeited;

(e) ...

(f) ...".

(Emphasis added).

10.3 I agree with Mr Royan that it appears that the learned SFC contends that the source of power to impose conditions are the 1994 Rules made pursuant to s. 26 of the Act. With regret I cannot accept the Respondents' contention. I agree with the Applicant's submission that the source of the Minister of Home Affair's power to impose conditions is s. 12 of the Act which reads "A licence or permit granted under this Act shall be subject **to such conditions as may be endorsed therein** and shall, unless sooner revoked or suspended, be valid for a period of twelve months from the date of the granting or issue of such licence or permit or for such shorter period as may be specified in the licence or permit". (Emphasis added).

10.4 I also agree with Mr. Royan that rule 3 of the said 1994 Rules relied on by the learned SFC merely provides the mechanism by which conditions are imposed. In the case of a permit the standard form permit is in Form B of the First Schedule titled "Publication Permit (Malaysia) bearing the specified standard conditions on the reverse of the permit as is apparent from a reading of rule 3 "**The** licence and **permit granted under the Act** shall be in the forms appearing in the First Schedule containing such conditions as are specified therein **and such further conditions as may be endorsed therein by the Minister**."(Emphasis added). In other words s.12 is the enabling provision under the Act by which the Minister derives his power to impose conditions and the form of the permit and the standard conditions in the permit including the further conditions which the Minister may endorse are governed by rule 3 of the 1994 Rules.

11. Flowing from this I am of the view that the learned SFC's contention that the Applicant cannot challenge the 1st Respondent's decision because of the ouster clause in s.13a of the Act is misconceived.

11.1 S.13a (1) of the Act reads "Any decision of the Minister to refuse to grant or to revoke or to suspend a licence or permit shall be final and shall not be called in question by any court on any ground whatsoever." On the face of it, under s.13a (1) of the Act, a decision of the Minister to refuse to grant or to revoke or to suspend a licence or permit cannot be challenged; however, I am of the view that it does not apply to the imposition of conditions, more so where the conditions impinge on matters of the Constitution and in this regard I agree with Mr. Royan any provision which restricts a constitutional right should be construed strictly. There are a plethora of authorities which indicate that judicial review is not ousted to correct errors of law by an administrative body or tribunal. It would suffice to refer to two authorities cited by Mr. Royan. The first is **Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama–sama Serbaguna Sungai Gelugor Dengan Tanggungan [1999] 3 CLJ 65** where at p.97 the Federal Court in considering the 2nd part of a question in respect of which leave was given, i.e. the issue of the effect of an ouster clause on the jurisdiction of the Court to grant judicial review held at p. 101 g "*In our view, therefore, unless there are special circumstances governing a particular case, notwithstanding a privative clause, of the "not to be challenged, etc." kind, judicial review will lie to impeach all errors of law made by an administrative body or tribunal and, we would add, of inferior courts. In the words of Lord Denning in Pearlman v. Harrow School (ibid) at p.70, "No Court or tribunal has any jurisdiction to make an error of law on which the decision in a case depends. If it makes such an error it goes outside its jurisdiction and certiorari will lie to correct it*".

11.2 The 2nd authority is **Syarikat Kenderaan Melayu Kelantan Bhd v. Transport Workers' Union [1995] 2 MLJ 317** referred to in **Majlis Perbandaran Pulau Pinang** (supra) at p.97 where the Court of Appeal at p.342 E-H speaking through His Lordship Gopal Sri Ram (now FCJ), inter alia, said "*An inferior tribunal or other decision-making authority, whether exercising a quasi-judicial function or* *purely administrative function, has no jurisdiction to commit an error of law [which categories of such error are not closed] ... Since an inferior tribunal has no jurisdiction to commit an error of law, its decisions will not be immunized from judicial review by an ouster clause however widely drafted."*

(i) **Illegality**

12. The Applicant submits the 1st Respondent has failed to take into account one or more of the **relevant considerations** appearing at paragraph 52 (i) to (xxii) of the Applicant's Affidavit in Support which I have reproduced below as it is pertinent to the issue at hand -

"(i) The word "Allah" is the correct Bahasa Malaysia word for "God" and in the Bahasa Malaysia translation of the Bible, "God" is translated as "Allah" and "Lord" is translated as "Tuhan";

(ii) For 15 centuries, Christians and Muslims in Arabic-speaking countries have been using the word "Allah" in reference to the One God. The Catholic Church in Malaysia and Indonesia and the great majority of other Christian denominations hold that "Allah" is the legitimate word for "God" in Bahasa Malaysia;

(iii) The Malay language has been the *lingua franca* of many Catholic believers for several centuries especially those living in Melaka and Penang and their descendants in Peninsular Malaysia have practised a culture of speaking and praying in the Malay language (Exh.MP-26);

(iv) The word "God" has been translated as "Allah" in the "Istilah Agama Kristian Bahasa Inggeris ke Bahasa Malaysia" first published by the Catholic Bishops Conference of Malaysia in 1989;

(v) The Malay-Latin dictionary published in 1631 had translated "Deus" (the Latin word for God) as "Alla" as the Malay translation (Exh.MP-27);

(vi) The Christian usage of the word "Allah" predates Islam being the name of God in the old Arabic Bible as well as in the modern Arabic Bible used by Christians in Egypt, Lebanon, Iraq, Indonesia, Malaysia, Brunei and other places in Asia, Africa etc;

(vii) In Bahasa Malaysia and Bahasa Indonesia, the word "Allah" has been used continuously in the printed edition of the Matthew's Gospel in Malay in 1629, in the first complete Malay Bible in 1733 and in the second complete Malay Bible in 1879 until today in the Perjanjian Baru and the Alkitab;

(viii) Munshi Abdullah who is considered the father of modern Malay literature had translated the Gospels into Malay in 1852 and he translated the word "God" as "Allah";

(ix) There was already a Bible translated into Bahasa Melayu in existence before 1957 which translation was carried out by the British and Foreign Bible Society where the word "Allah" was used (Exh.MP-28);

(x) There was also already in existence a Prayer book published in Singapore on 3.1.1905 where the word "Allah" was used (Exh.MP-29);

(xi) There was also a publication entitled "An Abridgment of the Christian Doctrine" published in 1895 where the word "Allah" was used (Exh.MP-30);

(xii) Another publication entitled "Hikajat Elkaniset" published in 1874 also contains the word "Allah" (Exh.MP-31);

(xiii) The Bahasa Indonesian and the Bahasa Malaysia translations of the Holy Bible, which is the Holy Scriptures of Christians, have been used by the Christian natives of Peninsular Malaysia, Sabah and Sarawak for generations;

(xiv) The Bahasa Malaysia speaking Christian natives of Peninsular Malaysia, Sarawak and Sabah had always and have continuously and consistently used the word "Allah" for generations and the said word "Allah" is used in the Bahasa Malaysia and Bahasa Indonesian translations of the Bible used throughout Malaysia;

(xv) At least for the last three decades the Bahasa Malaysia congregation of the Catholic Church have been freely using the Alkitab, the Bahasa Indonesia translation of the Holy Bible wherein the word "Allah" appears;

(xvi) The said publication is a Catholic weekly as stated on the cover of the weekly and is intended for the dissemination of news and information on the Catholic Church in

Malaysia and elsewhere and is not for sale or distribution outside the Church;

(xvii) The said publication is not made available to members of the public and in particular to persons professing the religion of Islam;

(xviii) The said publication contains nothing which is likely to cause public alarm and/or which touches on the sensitivities of the religion of Islam and in the fourteen years of the said publication there has never been any untoward incident arising from the Applicant's use of the word "Allah" in the said publication;

(xix) In any event the word "Allah" has been used by Christians in all countries where the Arabic language is used as well as in Indonesian/Malay language without any problems and/or breach of public order and/or sensitivity to persons professing the religion of Islam in these countries;

(xx) Islam and the control and restriction of religious doctrine or belief among Muslims professing the religion of Islam is a state matter and the Federal Government has no jurisdiction over such matters of Islam save in the federal territories;

(xxi) The subsequent exemption vide P.U.(A) 134/82 which permits the Alkitab to be used by Christians in churches *ipso facto* permits the use of the word "Alah" in the said publication;

(xxii) The Bahasa Malaysia speaking congregation of the Catholic Church uses the word "Allah" for worship and instruction and that the same is permitted in the Al-Kitab".

12.1 The Applicant further submits that none of the above-mentioned factual considerations were ever disputed or challenged by the 1st Respondent as factually incorrect. I am incline to agree with the Applicant as the response of the 1st Respondent to the factual averments is a feeble denial in paragraph 41 of the Affidavit of the 1st Respondent which reads "Keseluruhan pernyataan-pernyataan di perenggan-perenggan 50, 51 dan **52(i)-(xxii)** Affidavit Sokongan Pemohon **adalah dinafikan**..." (Emphasis added). In **Minister of Labour & The Government of Malaysia v. Lie Seng Fatt [1990] 1CLJ(Rep) 195** (case relied on by the Respondents) the issue turns on the extent of the power of the Minister of Labour to refer or not to refer the representations to the Industrial Court under s.20(3) of the Industrial Relations Act 1967 wherein the operative words are "the Minister may, if he thinks fit refer the representations to the Court.". The Supreme Court followed, inter alia, **Padfield and Ors. v. Minister of Agriculture, Fisheries and Food & Ors. [1968] 1 AER 694** (HL) (cited by the Applicant) and at p.199 stated "*The Minister's discretion under s.20(3) is wide but not unlimited. As stated earlier so long as he exercises the discretion without improper motive the exercise of discretion must not be interfered with by the Court unless he had misdirected himself in law or* ***had taken into account irrelevant matters or had not taken into consideration relevant matters*** *or that his decision militates against the object of the statute. Otherwise he had a complete discretion to refuse or refer a complaint* *which is clearly frivolous or vexatious which in our view this is one*". (Emphasis added).

12.2 Therefore I find the 1st Respondent in the exercise of his discretion to impose further conditions in the publication permit has not taken into account the relevant matters alluded to above, hence committing an error of law warranting this Court to interfere and I am of the view that the decision of the Respondents dated 7.1.2009 ought to be quashed.

13. The Applicant also contends in paragraph 30 of the Applicant's Affidavit that the Respondents have taken into account one or more of the following **irrelevant considerations** which are reproduced:

"(i) that Article 3(1) of the Federal Constitution states that Islam is the official religion of the Federation;

(ii) that Article 11(4) of the Federal Constitution permits laws to be made to control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam;

(iii) that several states have made laws to control or restrict propagation among persons professing the religion of Islam and have prohibited the use of certain words or phrases of the religion of Islam in publications of other religions;

(iv) that due to the differences in the words and phrases prohibited in the various states, confusion has arisen as to what words and phrases are prohibited especially in

Christian publications in the Indonesian language which were brought into Malaysia;

(v) that in the late 1970s and early 1980s there was uneasiness [kegelisahan] among the community and problems of enforcement among religious officers in the various states due to differences as to the words and phrases prohibited;

(vi) that following the above, the issue had become sensitive and had been classified as a security issue;

(vii) that the Second Respondent had decided that the Ministry of Internal Security which controls published materials under Section 7(1) of the Printing Presses And Publications Act 1984 is to deal with the issue;

(viii) that vide P.U.(A) 15/82, the Second Respondent had gazetted the prohibition of the Al-Kitab in Malaysia under Section 22 of the Internal Security Act 1960;

(ix) that after considering the appeals from various Christian bodies and institutions, the Second Respondent granted a special exemption to the said prohibition vide P.U.(A) 134 dated 13.5.1982 by stating that the use and possession of the Al-Kitab is allowed by Christians only in churches;

(x) that there was continuing confusion and uneasiness in the community when enforcement on the use of the words and phrases in religious publications was not effective;

(xi) that on 19.5.1986, the Second Respondent decided that from the 16 prohibited words, the words "Allah", "Kaabah", "Baitullah" and "Solat" are words and phrases exclusive to the religion of Islam and cannot be used in published materials of other religions save to explain concepts pertaining to the religion of Islam;

(xii) that the Second Respondent issued a circular vide KKDN. S.59/3/6/A dated 5.121986 to Christian publishers to comply with that decision;

(xiii) that the Second Respondent had permitted the use of the Al-Kitab by Christians in churches only and not in any other place;

(xiv) that the aforesaid permission did not extend to other Christian publications other than the translation of the Bible in Bahasa Melayu, i.e. the Al-Kitab".

13.1 In rebuttal, the Respondents in paragraph 30 of the 1st Respondent's Affidavit, "perenggan 30 Afidavit Sokongan Pemohon dirujuk dan saya sesungguhnya mempercayai dan menyatakan bahawa pernyataan-pernyataan di dalamnya adalah kesimpulan yang dibuat oleh Pemohon sendiri tanpa merujuk kepada surat-surat Responden Pertama yang dikeluarkan kepada Pemohon secara spesifik".

13.2 I find the reply of the Respondents to be inaccurate as in paragraph 30 of the Applicant's Affidavit, it is stated that the matters set out as irrelevant considerations for imposing the prohibition of use of various words and phrases by religions other than Islam were gleaned from "[the Respondents'] various letters ... over the last 10 years." To drive home the point in fact the "Arahan Kerajaan" dated 5.12.1986 (Exh.DSHA-1) (paragraph 8 of 1st Respondent's Affidavit) and dated 19.5.1986 (Exh.DSHA-2) (paragraph 9.1 of 1st Respondent's Affidavit) are the very same directives averred to in paragraph 30(xi) and (xii) of the Applicant's Affidavit.

13.3 As to the constitutional provisions of Articles 3(1) and 11(4) of the Federal Constitution referred to in paragraph 30 (i) and (ii) of the Applicant's Affidavit, I shall be reverting to them when addressing the issue of unconstitutionality and the constitutionality of the State Enactments.

13.4 With respect to the averments made by the 1st Respondent referred to paragraph 9(i), (viii) and (ix)(see pp.9-11) alluded to above, I am incline to agree with the Applicant that there is no factual basis in view of the uncontroverted historical evidence averred in paragraph 52 of the Applicant's Affidavit (see paragraphs 12 -12.1 above at pp. 15-20) above. I find support in the case of **Sagnata Investments Ltd. v. Norwich Corp [1971] 2 QB 614** (cited by the Applicant), which relates to an application for a permit under the Betting, Gaming and Lotteries Act by the company for the provision of amusements with prizes were refused by the licensing committee of the local authority, which adopted a general policy not to permit amusement arcades. On appeal by the local authority against the Recorder's order allowing the company's appeal which was affirmed by the Divisional Court, the Court of Appeal (majority decision) dismissed the appeal and held that there was no factual basis for a policy that the amusement arcade would be likely to have undesirable social effects on young people and upheld the company's claim for a permit (see pp.631,632 H-I to 633; 637-639 E).

14. The case of **Minister of Home Affairs, Malaysia v. Persatuan Aliran Kesedaran Negara [1990] 1 CLJ (Rep) 186** cited by the Respondents, albeit a case under the Act is in my view an authority which favours the Applicant rather than the Respondents as it reinforces the point regarding the three grounds upon which administrative action is subject to judicial review as referred to in **CCSU** (supra); one ground is "illegality" and one of the factors for consideration is whether the Minister of Home Affairs has taken into account all relevant considerations and has not taken irrelevant maters into consideration in exercising his discretion to reject Aliran's application for a permit and in this instant case to impose the condition under dispute in the publication permit.

(ii) **Unconstitutionality**

15. The Applicant's grounds for the reliefs of certiorari and declaration is premised on the unconstitutional acts and conduct being inconsistent with Articles 3(1), 10 ,11 and 12 of the Federal Constitution namely -

"(i) The Applicant's legal right to use the word "Allah" in the said publication stems from the Applicant's constitutional rights to freedom of speech and expression and religion, to practise its religion in peace and harmony in any part of the Federation and to manage its own religious affairs and to instruct and educate the Catholic congregation in the Christian religion as enshrined in Articles 3, 10, 11 and 12 of the Federal Constitution. The exercise of these rights extends to propagating the faith amongst the non-English speaking faithful in Malaysia especially the

Indonesians and the Arabic-speaking of the Christian faith(paragraph 48 of Applicant's Affidavit);

(ii) The Applicant has a very important role in instructing and educating the Catholic congregation in the Christian religion in various languages and the said publication serves as a very effective avenue and medium by which the teachings of the Catholic Church are imparted to the Catholic faithful throughout Malaysia and elsewhere. Since the teaching of Catholic doctrines is effectively carried out by the said publication in fulfillment of the Applicant's apostolic mission and this teaching includes the use of the word "Allah" especially with regard to the Bahasa Malaysia and Arabic speaking community, any action by the Respondents to revoke the Publication Permit of the said publication on the grounds that the said publication is prohibited from using the word "Allah" would result in the Applicant losing a very important teaching tool and this would be a very serious violation of the Applicant's constitutional right under Article 12 of the Federal Constitution"(paragraph 49 of Applicant's Affidavit).

15.1 In rebuttal to paragraph 48, the Respondents made a bald statement by merely averring "...larangan yang dikenakan sama sekali tidak melanggar hak asasi Pemohon" under the relevant Articles (paragraph 38 of 1st Respondent's Affidavit). In response to paragraph 49, the Respondents aver "pernyataan Pemohon itu jelas sekali menunjukkan tindakan Pemohon tersebut menjurus kepada perlanggaran peruntukan Enakmen Kawalan dan Sekatan

Pengembangan Agama Bukan Islam Kepada Orang Islam (Negeri-negeri)". I am of the view paragraph 49 of the Applicant's Affidavit remains uncontroverted as I cannot comprehend how the Applicant's conduct can amount to a contravention of the various Control and Restriction of the Propagation of Non Islamic Religions Enactments as I find there no nexus between them.

15.2 The Respondents have submitted that the Applicant have not demonstrated in their Affidavit that (i) they are unable to profess and practise their religion under Articles 3 and 11 because they have been prohibited from using the word "Allah" in the Herald but merely stated that it would be difficult for the Church to teach its Bahasa Melayu speaking followers and the word "Allah" is a translation for "God" which is wrong as the proper translation is "Tuhan"; (ii) that the prohibition has obstructed the integral practice of their religion citing **Meor Atiqulrahman Ishak & Ors v. Fatimah Sihi & Ors [2006] 4 CLJ 1**.

15.3 With respect I cannot accept the Respondents' contention. Firstly, it is to be noted Article 3(1) reads " Islam is the official religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation". In **Meor Atiqulrahman Ishak**(supra) the issue was whether the School Regulations 1997, in so far as it prohibits the wearing of "serban"(turban) by students of the school as part of their uniform during school hours violated Article 11(1)of the Federal Constitution. To consider whether a particular law or regulation is constitutional or not under Article 11(1), His Lordship Abdul Hamid Mohamad FCJ (as he then was) (speaking on behalf of the Federal Court) at paragraph 17 p.9 stated that whether a practice is or is not an integral part of the religion is not the only factor to be considered; there are other equally important factors and advocated the following approach :

> *"First, there must be a religion. Secondly, there must be a practice. Thirdly, the practice is a practice of that religion. All these having been proved, the court should then consider the importance of the practice in relation to the religion. This is where the question whether the practice is an integral part of the religion or not becomes relevant. If the practice is of a compulsory nature or "an integral part" of the religion, the court should give more weight to it. If it is not, the court, again depending on the degree of its importance, may give a lesser weight to it".*

15.4 Further His Lordship referred to other factors (i) at paragraph 19 p.9 "The next step is to look at the extent or seriousness of the prohibition. A total prohibition certainly should be viewed more seriously than a partial or temporary prohibition"; and (ii) at paragraph 20 p.9 "Then, we will have to look at the circumstances under which the prohibition is made."

15.5 Applying the principles enunciated in **Meor Atiqulrahman Ishak**(supra) to the instant case, there is no doubt that Christianity is a religion. The next question is whether the use of the word "Allah" is a practice of the religion of Christianity. In my view there is uncontroverted historical evidence alluded to in paragraph 52 (i) to (xxii) alluded to above which is indicative that use of the word "Allah" is a practice of the religion of Christianity. From the evidence it is apparent the use of the word "Allah" is an essential part of the worship and instruction in the faith of the Malay (Bahasa Malaysia) speaking community of the Catholic Church in Malaysia and is integral to the practice and propagation of their faith.

15.6 The next consideration is the circumstances under which the "prohibition" was made. The circumstances to my mind would be the factors which the Respondents rely on to justify the impugned decision which have been alluded to in paragraph 9(i) to (ix) above.

15.7 As to the ground in paragraph 9 (i) in my judgment, this is unmeritorious for the reason which has been dealt under the issue of whether the use of the word "Allah" endangers public order and national security. As to the ground in paragraph 9 (ii),(iii), (v) and (ix), I have shown unchallenged evidence that there is a well established practice for the use of the "Allah" amongst the Malay speaking community of the Catholic faith in Peninsular Malaysia, Sabah and Sarawak and the origin of the word and its translation. With respect to the ground in paragraph9 (iv), (vi) and (vii) I find this issue is without merit as shown in paragraphs 18 and 19 below.

15.8 Considering all the factors, in my judgment, the imposition of the condition in the publication permit prohibiting the use of the word "Allah" in the said publication, "Herald - the Catholic Weekly" pursuant to the 1st Respondent's exercise of powers under the Act contravenes the provision of Articles 3(1), 11(1) and 11(3) of the Federal Constitution and therefore is unconstitutional.

16. In **Dr Mohd Nasir bin Hashim v. Menteri Dalam Negeri Malaysia [2006] 6 MLJ 213** (cited by the Applicant), the appellant and 12 others met to form PSM. They formed a committee of seven. An application was made to the Registrar of Societies(ROS) to register themselves as a political party. The ROS declined to grant

registration at a national level but was prepared to grant registration in the State of Selangor. Dissatisfied the appellant appealed to the Minister of Home Affairs and was dismissed on 2 grounds, one of which was the registration was not in the interest of national security based on information made available by the police to the Minister. The appellant contended his fundamental right under Article 10(1) (c) of the Federal Constitution to form PSM had been infringed by the ROS and the Minister and argued that the departmental policy of the ROS not to register at the national level is a restriction not authorised by the Constitution. The Applicant has succinctly summarised the findings of the Court of Appeal (pp.218 to 220) as follows: " the Court of Appeal noted that Art 10(2)(c) uses the formula **"such restrictions as it deems necessary or expedient"**. In examining the all important question of whether Parliament is free to impose any restriction however unreasonable that restriction may be, the Court of Appeal referred to **Nordin bin Salleh v Dewan Undangan Negeri Kelantan** [1992] 1 MLJ, the Privy Council case of **Prince Pinder v The Queen** [2002] UKPC 46, and **Dato Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus** [1981] 1 MLJ 29, FC and held that Federal Constitution, especially those articles in it that confer on the citizens the most cherished of human rights, must on no account be given a literal meaning. The Court of Appeal was also mindful of the fact that when interpreting the other parts of the Constitution, the Court must bear in mind the all-pervading provision of Article 8(1). Against the background of these principles the Court of Appeal read the word **"reasonable"** into the sub-clauses of Article 10(1). The Court held that it must not permit restrictions upon the rights conferred by Article 10 that render those rights illusory. In other words, Parliament may only impose **such restrictions as are reasonably necessary**".

16.1 In the instant case, the Applicant claims there is an infringement of Article 10(1) (a) of the Federal Constitution which reads -

> "(1) Subject to Clauses (2), (3) and (4) –
>
> (a)every citizen has the right to freedom of speech and expression".

Clause 2 of Article 10 reads –

> "(2) Parliament may by law impose –
>
> (a) on the rights conferred by paragraph (a) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence".

16.2 It is to be noted that the same operative words appear in restricting the rights conferred by clause (1)(a) of Article 10 i.e."such restrictions as it deems necessary or expedient". Applying the principle propounded in **Dr Mohd Nasir bin Hashim**(supra) to the factual matrix in this case, the Court has to examine whether the restrictive legislative restriction i.e. the imposition of the condition prohibiting the use of the word "Allah" in the said publication amounts to an unreasonable restriction on the freedom of speech and expression under Article 10(1)(c) and an unreasonable administrative act which impinges on the first limb of Article 8 (1) which demands fairness of any forms of State action. The only conclusion that can be drawn is that the imposition of the condition prohibiting the use of the word "Allah" in the said publication is unreasonable for the same reasons when I found that the 1st Respondent's exercise of powers under the Act contravenes the provision of Article 11(1) and 11(3) of the Federal Constitution and therefore is unconstitutional but in this instance it contravenes Article 10(1)(c).

16.3 Thus for all the reasons stated I find that there is merit in the Applicant's contention that the condition imposed i.e. the Applicant is prohibited in using the word "Allah" in the Bahasa Melayu version of the Herald is illegal null and void.

(iii) **Irrationality/ Wednesbury unreasonableness**

17. The Applicant challenges the impugned decision under this head of irrationality/ Wednesbury unreasonableness which applies to "a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it"(see **CCSU**(supra) at p.410).

17.1 The grounds upon which the Applicant mounts this head of challenge are those under the heads of illegality and unconstitutionality together with the following additional grounds:

"(a) It is utterly irrational and unreasonable on the part of the Respondents on the one hand not to prohibit the congregation of the Catholic Church to use the word "Allah" for worship and instruction in their faith and in the Al-Kitab and on the other hand to state that the same word cannot be used in the said publication which serves to assist these persons in their worship and provide a medium of instruction in their faith and to disseminate news and information (see paragraph 52 (xxi) of Applicant's Affidavit).

(b) It is also utterly irrational and unreasonable on the part of the Respondents to require the Bahasa Malaysia speaking congregation of the Catholic Church to use another word to denote the Bahasa Malaysia word for "God" instead of the word "Allah" when such is and has always been the word used for the word "God" in the Catholic Church and throughout the Bahasa Malaysia speaking community of the Church in Malaysia (see paragraph 52 (iii) and (xiv) of Applicant's Affidavit)".

17.2 The Respondents argue the 1st Respondent was acting perfectly within the four corners of his jurisdiction and had taken into account relevant considerations such the status of Islam under the Constitution, the various enactments on control and restrictions on the propagation of religious doctrine or belief among Muslims, government policy, public security and safety and religious sensitivity.

17.3 Firstly, as far as the two areas of challenge under the heading of illegality and unconstitutionality are concerned, I adopt my views expressed with respect to these two grounds.

17.4 In relation to the 2 additional grounds mentioned in paragraph 17.1 above, the Respondents responded -

(i) "Merujuk kepada perenggan 20 Afidavit Sokongan Pemohon, Responden-Responden menegaskan bahawa Pernyataan YAB Perdana Menteri tersebut yang telah dikeluarkan melalui media cetak "The Star" pada 20/4/2005 adalah amat jelas mengarahkan agar di kulit "Bible" dalam versi Bahasa Melayu dinyatakan secara jelas bahawa ianya bukan untuk orang Islam dan ianya hanya dijual di kedai-kedai orang Kristian. Walau bagaimanapun saya sesungguhnya mempercayai dan menyatakan bahawa kenyataan media yang dirujuk itu adalah berhubung dengan Al-Kitab (Bible) sahaja dan tidak relevan kepada isu permit penerbitan Herald – the Catholic Weekly yang mana syarat yang dikenakan adalah amat jelas dan perlu dipatuhi oleh Pemohon" (paragraph 22 of 1st Respondent's Affidavit); and

(ii) the circulation of the Al-kitab vide P.U.(A) 134 dated 13.5.1982 was made subject to the condition that its possession or use is only in churches by persons professing the Christian religion, throughout Malaysia.

17.5 I find the 2 additional grounds submitted by the Applicant in paragraph 17.1 above to be of substance. It is to be noted that a common thread runs through like a tapestry in the Respondents' treatment of restricting the use of the word "Allah" which appears in the Al-kitab are (i) that it is not meant for Muslims; (ii) to be in the possession or use of Christians and in churches only. In fact these restrictions are similar to that imposed as a second condition in the impugned decision save for the endorsement of the word "Terhad" on the front cover of the said publication. Relying on the chapter on maxims of interpretation at paragraph 44 p.156 of N.S.Bindra's Interpretation of Statute, there is a maxim "Omne majus continet in se minus" which means "The greater contains the less". One would have thought having permitted albeit with the usual restrictions the Catholic Church to use the word "Allah" for worship and in the Al-kitab, it would only be logical and reasonable for the Respondents to allow the use of the word "Allah" in the said publication drawing an analogy by invoking the maxim "The greater contains the less". Indeed I am incline to agree with the Applicant that the Respondents are acting illogically, irrationally and inconsistently and no person similarly circumstanced would have acted in a like manner.

17.6 The Applicant submitted that in a review on the grounds of Wednesbury unreasonableness the Court of Appeal in **Harris Solid State & Ors. v. Bruno Pereira & Ors[1996] 4 CLJ 747** at p.749 held "*it is not merely confined to an examination of the decision –making process but may go into the merits of the decision itself.*" I find there is merit in the Applicant's contention that when viewed on its merits, the reasons given by the Home Ministry in the various directives defies all logic and is so unreasonable.

(iv) **The constitutionality of the State Enactments**

18. The Respondents submitted (i) the 1st Respondent in his Affidavit had stated that he had also taken into consideration the existence of the laws to control and restrict the propagation of religious doctrine or belief among Muslims in various states; (ii) these laws are valid under Article 11(4) of the Federal Constitution and cited **Mamat bin Daud & Ors. v. Government of Malaysia [1988] 1 MLJ119** (SC) and **Sulaiman Takrib v. Kerajaan Negeri**

Terengganu, Kerajaan Malaysia (Intervener) & Or. Cases [2009] 2 CLJ 54(FC) in support; (iii) if the 1st Respondent allows the use of the word "Allah" when there is in existence these laws, the decision will be illegal because it is going against them; (iv) one of the reason for the decision is to avoid confusion and misunderstanding among Muslims; there is no guarantee that the said publication will be circulated only among Christians and will not fall into the hands of Muslims and it has gone online and is accessible to all.

18.1 Pursuant to Article 11(4) of the Federal Constitution, ten States have enacted laws to control and restrict the propagation of religious doctrine or belief among Muslims. The laws are –

(i) Control and Restriction of the Propagation of Non Islamic Religions Enactment 1980 (State of Terengganu Enactment No.1/1980);

(ii) Control and Restriction of the Propagation of Non Islamic Religions Enactment 1981 (Kelantan Enactment No.11/1981);

(iii) Control and Restriction of the Propagation of Non Islamic Religions to Muslim Enactment 1988 (Malacca Enactment No.1/1988);

(iv) Control and Restriction of the Propagation of Non Islamic Religions Enactment 1988 (Kedah Darulaman Enactment No.11/1988);

(v) The Non Islamic Religions (Control of Propagation Amongst Muslims) Enactment 1988 (Selangor Enactment No.1/1988);

(vi) The Control and Restriction of the Propagation of Non Islamic Religions Enactment 1988 (Perak No.10/1988);

(vii) Control and Restriction of the Propagation of Non Islamic Religions Enactment 1989 (Pahang Enactment No.5/1989);

(viii) Control and Restriction of the Propagation of Non Islamic Religions Enactment 1991 (Johor Enactment No.12/1991);

(ix) The Control and Restriction (The Propagation of Non Islamic Religions Amongst Muslims) (Negeri Sembilan) Enactment 1991 (Negeri Sembilan Enactment No.9/1991); and

(x) Control and Restriction of the Propagation of Religious Doctrine and Belief which is Contrary to the Religion of Islam Enactment 2002 (Perlis Enactment No.6 of 2002).

18.2 It is not disputed that s. 9 of the various State Enactments provide for an offence relating to the use of certain words and expressions listed in Part 1 or 11 of the Schedule or in the Schedule itself as the case maybe of the State Constitutions and which includes the word "Allah". Further, all these State Enactments are made pursuant to Article 11(4) of the Federal Constitution which reads " State law and in respect of the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, federal law **may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam.**" (Emphasis added). At this juncture it is appropriate for the Court to bear in the forefront of its mind the instructive principles of constitutional interpretation pronounced by the Federal Court in the recent case of **Sivarasa v. Badan Peguam Malaysia & Anor (Rayuan Sivil No.01-8-2006(W) dated 17.11.2009 – unreported)** cited by Mr.Royan where the appellant challenged the constitutionality of s.46A(1) of the Legal

Profession Act, which prohibits him, an advocate and a solicitor and also an office bearer of a political party and a Member of Parliament from holding office in the Bar Council. The principles are – (i) the fundamental liberties guaranteed under Part 11 of the Federal Constitution must be generously interpreted and that a prismatic approach to interpretation must be adopted; the provisions of Part 11 contain concepts that house within them several separate rights and the duty of the Court is to discover whether that particular right claimed as infringed by state action is indeed submerged within a given concept; (ii) provisos or restrictions that limit or derogate from a guaranteed right must be read restrictively; (iii) the test to be applied in determining whether a constitutionally guaranteed right has been violated is "whether it directly affects the fundamental rights or its inevitable effect or consequence on the fundamental rights is such that it makes their exercise ineffective or illusory."; (iv) the fundamental rights guaranteed under Part II is part of the basic structure of the Constitution and that Parliament cannot enact laws(including acts amending the Constitution) that violate the basic structure(per Gopal Sri Ram FCJ at paragraphs 3.5 and 6).

18.3 Mr Royan drew to the Court's attention (i) that Article 11(4) which is the restriction does not state that State law can forbid or prohibit but "may control or restrict"; does not provide for State law or any other law to control or restrict the propagation of any religious doctrine or belief among persons professing a religion other than Islam; the word " propagate" means "to spread from person to person, ... to disseminate...(... belief or practise, etc)" citing **Rev. Stainislaus v. State of Madhya Pradesh and Ors.[1977] A.I.R. 908** (S.C) at p.911 let column. Mr. Royan submits ex facie, s. 9 of the State Enactments make it an offence for a person who is not a

Muslim to use the word "Allah" except by way of quotation or reference; so it appears that a Christian would be committing an offence if he uses the word "Allah" to a group of non-Muslims or to a non-Muslim individual. Mr. Royan then argues that that cannot be the case because Article 11(4) states one may "control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam." I am persuaded such an interpretation would be ludicrous as the interpretation does not accord with the object and ambit of Article 11(4) of the Federal Constitution.

18.4 I find there is merit in Mr Royan's submission that unless we want to say that s.9 is invalid or unconstitutional to that extent(which I will revert to later), the correct way of approaching s.9 is it ought to be read with Article 11(4). If s.9 is so read in conjunction with Article 11(4), the result will be that a non-Muslim could be committing an offence if he uses the word "Allah" to a Muslim **but** there would be no offence if it was used to a non-Muslim. Indeed Article 11(1) reinforces this position as it states "Every person has the right to profess and practise his religion and, **subject to Clause (4), to propagate it**". Clause 4 restricts a person's right only to propagate his religious doctrine or belief to persons professing the religion of Islam. So long as he does not propagate his religion to persons not professing the religion of Islam, he commits no offence. It is significant to note that Article 11(1) gives freedom for a person to profess and practise his religion and the restriction is on the right to propagate.

18.5 I find Mr. Royan's argument is further augmented by the submission of Mr Benjamin Dawson, learned Counsel for the Applicant which I find to be forceful stating that this rule of construction is permissible in the light of the mischief the State

Enactments seek to cure and the provision has to be interpreted to conform to the Constitution (See **Sivarasa Rasiah** (supra) and **Dewan Undangan Negeri Kelantan & Anor v. Nordin bin Salleh & Anor [1992] 1 MLJ 697**(S.C) followed in the former case at paragraph 6). He submitted that apart from Article 11(4) itself, from the preamble to the State Enactments the mischief of the State Enactments is none other than what is set out in Article 11(4) i.e. restriction and propagation among persons professing the religion of Islam. For completeness I shall spell out the preamble in full "WHEREAS Article 11(4) of the Federal Constitution provides that State law may control or restrict the propagation of any religious doctrine or belief **among persons professing the religion of Islam.** AND WHEREAS it is now desired to make a law to control and restrict the propagation of non-Islamic religious doctrines and beliefs **among persons professing the religion of Islam.**"(Emphasis added).

18.6 If the Court does not adopt such a construction, it would render the fundamental rights as enshrined in Articles 3, 8 (see **Dr. Mohd Nasir bin Hashim** (supra) at paragraph 16 above and **Sivarasa Rasiah** (supra) at paragraph 27 as to why Article 8 becomes applicable) 10, 11 and 12 relied on by the Applicant as illusory.

19. The other approach of interpretation which I would adopt is the doctrine of proportionality which is housed in the equal protection limb, the 2nd limb of Article 8(1) advocated in **Sivarasa Rasiah** (supra) (per Gopal Sri Ram FCJ at paragraph 19) submitted by Mr.Royan and Mr. Dawson. From paragraphs 27-31 of the judgment, after examining several high authorities, His Lordship Gopal Sri Ram

FCJ (speaking on behalf of the Federal Court) stated the test is whether the legislative state action which includes also executive and administrative acts of the State is disproportionate to the object it seeks to achieve and in determining whether the limitation is arbitrary or excessive the threefold test is applicable - "whether legislative or executive – that infringe a fundamental right must (i) have 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".

19.1 Applying the said test to the factual matrix of the present case the Court has to bear in mind the constitutional and fundamental rights of persons professing the Christian faith to practise their religion and to impart their faith/religion to persons within their religious group and in this case, the Catholic Church comprises a large section of people from Sabah and Sarawak whose medium of instruction is Bahasa Malaysia and they have for years used religious material in which their God is called "Allah"; for that matter there is a large community who are Bahasa Malaysia speaking from Penang and Malacca. On the other hand the object of Article 11(4) and the State Enactments is to protect or restrict propagation to persons of the Islamic faith. Seen in this context by no stretch of imagination can one say that s.9 of the State Enactments may well be proportionate to the object it seeks to achieve and the measure is therefore arbitrary and unconstitutional. Following this it shows the 1st Respondent has therefore taken an irrelevant consideration.

20. As to the concern of the Respondents there is no guarantee that the magazine would be circulated only among Christians and it will not fall into the hand of Muslims, I agree with Mr Royan there is no requirement of any guarantee be given by anyone in order to profess and practise and even to propagate it. In my view if there are breaches of any law the relevant authorities may take the relevant enforcement measures. We are living in a world of information technology; information can be readily accessible. Are guaranteed rights to be sacrificed at the altar just because the Herald has gone online and is accessible to all? One must not forget there is the restriction in the publication permit which serves as an additional safeguard which is, the word "TERHAD" is to be endorsed on the front page and the said publication is restricted to churches and to followers of Christianity only.

21. With respect to the learned SFC, I am of the view that the contention of the Respondents that **Mamat bin Daud & Ors. v. Government of Malaysia [1988] 1 MLJ119** (SC) and **Sulaiman Takrib v. Kerajaan Negeri Terengganu, Kerajaan Malaysia (Intervener) & Or. Cases [2009] 2 CLJ 54**(FC) is authority for the proposition that the State Enactments are valid under Article 11(4) of the Federal Constitution is misconceived. I agree with Mr. Royan that the two authorities have nothing to do with the State Enactments. In **Mamat bin Daud** (supra), the issue was whether s.298A Penal Code which was enacted by Parliament by an amending Act in 1983 is ultra vires Article 74(1) of the Federal Constitution. The petitioners contended the law was invalid as being ultra vires the Constitution because having regard to the pith and substance of the section, it is a law which ought to be passed not by Parliament but by the State

Legislative Assemblies except in the Federal Territories of Kuala Lumpur and Labuan, it being a legislation on Islamic religion under Article 11(4) and item 1 of List 11, Ninth Schedule. By a majority decision of 3-2, the Supreme Court held that s.298A Penal Code is invalid null and void after having considered and examined the section as a whole, it is a colourable legislation in that it pretends to be a legislation on public order, when in pith and substance it is a law on the subject of religion with respect to which only the states have power to legislate under Articles 74 and 77 of the Federal Constitution (see Headnotes at p.119). As for **Sulaiman Takrib** (supra) the petitioner, a Muslim was charged with offences under ss10 and 14 Syariah Criminal Offences (Takzir)(Terengganu) Enactment 2001("SCOT"). The proceedings before the Federal Court was commenced under Article 4(4) of the Federal Constitution for a declaration that s.51of the Administration of Islamic Religious Affairs (Terengganu) Enactment 2001and ss10 and 14 SCOT which were enacted by the State Assembly of Terengganu ("SLAT") were invalid on the ground SLAT has no powers to make such provisions.

(v) **Public security and order**

22. Learned SFC submits in paragraph 6 of the 1st Respondent's Affidavit the 1st Respondent states "(b) Dalam mencapai keputusan tersebut, saya berpuashati bahawa penggunaan kalimah "ALLAH" dalam penerbitan majalah Herald – The Catholic Weekly akan mengancam keselamatan dan ketenteraman awam serta menimbulkan sensitiviti keagamaan di kalangan rakyat Malaysia". Based on this, learned SFC further submits the grounds of public security, public order and religious sensitivity are legal, rational and reasonable of which the judges are the executive and the Court is not

in a position to question the issue and must accept these reasons citing **Kerajaan Malaysia v. Nasharuddin Nasir [2004]1 CLJ 81** and **R v. Secretary of State for the Home Department, Ex Parte MC Avoy [1984] All ER 417.**

22. 1 The Respondents also allege the Applicant did not file any affidavit to dispute the facts, hence security reasons are deemed admitted by the Applicant citing **Ng Hee Thoong & Anor v. Public Bank Bhd [1995] 1 MLJ 281.** I find this submission is inaccurate as the Applicant has at paragraph 60 of the Applicant's Affidavit averred-

> "60. I wish to state that the First Respondent's reported statement that the continued use of the word "Allah" in the said publication will bring about confusion or unease to other faith communities is clearly unfounded as the Applicant has no intentions or has never done anything to bring about any such conflict, discord or misunderstanding. Further, I reiterate that the reality of the matter is that in the last 14 years of the said publication there has never been any untoward incident arising out of the use of the word "Allah" in the said publication".

22.2 The Applicant submits the Respondents' reply to paragraph 60 is in paragraph 45 -

> "45. Merujuk kepada perenggan-perenggan 59, **60** dan 63 Afidavit Sokongan Pemohon, saya sesungguhnya mempercayai dan menyatakan bahawa kalimah Allah adalah nama khas bagi Tuhan Yang Maha Esa bagi penganut agama Islam dan ini jelas termaktub di dalam

Al-Quran dan dimartabatkan di dalam Perlembagaan Persekutuan".

I find from the said reply, there in merit in the Applicant's contention that the 1st Respondent has not rebutted the Applicant's averment in paragraph 60 and thus the averment "the Applicant had never intended or caused any conflict, discord or misunderstanding and that there has never been any untoward incident arising out of the use of the word "Allah" in the said publication in the last 14 years is to be accepted" is deemed to be accepted.

22.3 There is merit in the Applicant's argument that the Respondents in paragraph 45 of his Affidavit (also in paragraphs 6, 25 and 46) sought to justify imposing the condition in purported exercise of his powers under the said Act on a mere statement that the use of the word "Allah" is a security issue which is causing much confusion and which threatens and endangers public order, without any supporting evidence. A mere statement by the 1st Respondent that the exercise of power was necessary on the ground of national security without adequate supporting evidence is not sufficient in law (see **JP Berthelsen v Director General of Immigration, Malaysia & Ors** [1987] 1 MLJ 134 (FC); **Dr. Mohd Nasir bin Hashim v Menteri Dalam Negeri Malaysia** [2006] 6 MLJ 213)(CA) which followed **JP Berthelsen**(supra)). In my view the cases of **Nasharuddin Nasir** (supra) and **Ex Parte MC Avoy** (supra) do not spell out there ought to be total prohibition of interference from the Court, rather it ought to be slow to intervene as can be inferred from the dictum of His Lordship Steve Shim CJ (Sabah & Sarawak)(as he then was) at p.97a "It seems apparent from these cases that where matters of national security and public order are involved, the court should not intervene by way of judicial review or be hesitant in doing so as these are matters especially within the preserve of the executive, involving as they invariably do, policy considerations and the like".

22.4 I agree with the Applicant there is no material to support the Respondents' argument that the use of the word "Allah" is a threat to national security or from which an inference of prejudice to national security may be inferred; all there is before the Court is a mere "ipse dixit" of the 1st Respondent "... Larangan yang dikenakan hanyalah berhubung penggunaan kalimah Allah di dalam penerbitan majalah tersebut yang bertujuan untuk memastikan tidak berlakunya kekeliruan agama yang boleh mengancam keselamatan dan ketenteraman awam serta menimbulkan sensitiviti keagamaan di Negara ini." **(see paragraphs 6, 25 and 46 of Enclosure 17).** Therefore I am of the view that this ground ought to be rejected.

22.5 I find there is merit in Mr. Dawson's argument that the Court ought to take judicial notice that in other Muslim countries even in the Middle East where the Muslim and the Christian communities together use the word "Allah", yet one hardly hear of any confusion arising (see paragraph 52(xix) of the Applicant's Affidavit which is not rebutted). Further, I am incline to agree that the Court has to consider the question of "avoidance of confusion" as a ground very cautiously so as to obviate a situation where a mere confusion of certain persons within a religious group can strip the constitutional right of another religious group to practise and propagate their religion under Article 11(1) and to render such guaranteed right as illusory.

(vi) **Other Matters**

23. Mr Royan submits the Respondents have made references to various opinions and views in their Written Submission (Enc.104)

namely (i) p.14 at paragraph 15 (dated 6.2.2009)(this article "entitled "Isu Penggunaan Kalimah Allah" of Abu Bakar (Fellow of IKIM) is also referred in p.2 of the Respondents' Supplemental Submission(Encl.104A) (ii) p.17 at paragraph 24 (dated 7.5.2008); (iii) p.26 at paragraph12 (dated 6.1.2008); (iv) p.27 at paragraph 13 (dated 6.2.2009); (v) p.28 at paragraph 14 (dated 20.2.2008) (this article entitled "Heresy Arises From Words Wrongly Used" of Dr. Syed Ali Tawfik Al- Attas / Dr. Mohd Sani b. Badron is also referred in p.3 of the Respondents' Supplemental Submission; (vi) p.29 at paragraph 18 (dated 6.1.2008) and (vii) p.52 at paragraph 5 (dated 6.1.2008). I agree with Mr. Royan that the passages are from articles and they have not been adduced as affidavit evidence in the usual way. O.53 r.6 of the RHC provides any party to a judicial review application may, inter alia, apply for discovery and inspection of documents (under O.24) or to cross-examine the deponent of any affidavit filed in support or in opposition to the application pursuant to O.38. It is my opinion from the existence of O.53 r.6 it is envisaged any documentary evidence which the Respondents seek to rely as proof to substantiate their claims out to be adduced by affidavit evidence which will then give an opportunity to the Applicant if they wish to challenge the "evidence" to invoke the processes thereunder.

23.1 As the passages at paragraphs 16 and 17 of Encl.104 are unsubstantiated with no mention as to the source or origin at all, I agree with Mr. Royan that these are purely statements from the Bar and cannot be admitted.

23.2 It is to be noted that the dates of the articles are either in 2008 or 2009. The instant judicial review application was filed on 16.1.2009 whilst the application that preceded this instant application (R1-25-73-2008) was filed on 19.3.2008. In the light of this I agree with the

Applicant these articles all of which were written round about the time when the judicial review applications were filed are self- serving documents which when weighed against the historical evidence of the Applicant which is uncontroverted, I am incline not to attach any weight to these articles and opinions.

24. The Applicant contends there is a serious doubt as who is the decision maker by referring to paragraph 5 of the 1st Respondent's Affidavit and paragraphs 2 and 10 of the Affidavit affirmed by Che Din bin Yusoh and whether the grounds set out in the Affidavit of the 1st Respondent which form the basis for the decision of 7.1.2009 are valid. I find nothing turns on this contention and it is a non–starter. I agree with Dato' Kamaluddin that in all likelihood the word keputusan" in paragraph 10 was wrongly quoted by Che Din because it must be read in the context of paragraph 2 which refers to a letter dated 7.2.2009 (Exh.MP-25). In paragraph 2 of the said letter it is written "Bahagian ini"; thus the word "keputusan" in paragraph 10 would logically refer to "keputusan Bahagian saya" or "keputusan Bahagian ini".

(vi) **Issue of justiciability**

(a) **Position of 4th, 5th and 7th Respondents.**

25. I had on 31.12.2009 dismissed the applications of the Majlis Agama Islam (MAI) of Wilayah Persekutuan, Johore, Selangor, Kedah. Malacca, the MAI dan Adat Melayu Terengganu and MACMA to be heard in opposition under O.53 r.8 of the RHC (It is to be noted that the MAI dan Adat Melayu Perak and MAI Pulau Pinang did not file any application under O.53 r.8). That being the case their

submission contending the issue of whether any publication in whatever form by a non-Muslim individual or body or entity that uses the sacred word of "Allah" can be permitted in law is one that is within the absolute discretion of the Rulers and the Yang di-Pertuan Agong (YDPA) (in respect of Penang, Malacca, Sabah, Sarawak and the Federal Territories) as the respective Heads of Islam and is therefore non-justiciable is irrelevant at the substantive hearing of the judicial review application and need not be considered by this Court.

26. In the event I err in my finding, I shall now consider the arguments put forth by them. As highlighted by the Applicant, the 4th, 5th and 7th Respondents had made extensive references to the Federal Constitution, State Enactments to establish that the Rulers and the YDPA are the Heads of Islam in the various states and Federal Territories. They then submit -

(i) that by virtue of their position as Head of Islam, the Rulers and the YDPA have an absolute discretion on the matter of whether any publication by a non Muslim entity which uses the word "Allah" can be permitted in law; and

(ii) that the States Enactments that control the propagation of religious doctrine or belief among Muslims which prohibit, amongst others, the use of the word "Allah" by non Muslims confer absolute discretion on the Ruler or the Ruler in Council to determine whether any of the prohibited words can be used by non Muslims and therefore the issue is non justiciable.

27. I adopt the following responses of the Applicant contending the application is justiciable and I am of the view there is substance-

(i) the Federal Constitution and the State Constitutions clearly provide that the Rulers and the YDPA as the Head of Islam in the States and the Federal Territories have exclusive authority only on Islamic affairs and Malay customs;

(ii) subject to Articles 10 and 11 of the Federal Constitution, the control and regulation of all publications and matters connected therewith are governed by federal law namely the Act and only the Minister for Home Affairs is involved in the implementation and enforcement of its provisions. Under this Act, only the Minister can decide what is permitted to be published and in this regard the Rulers and the YDPA have no role whatsoever under the scheme of this Act;

(iii) the present judicial review is not a judicial review of a decision of the Rulers or the YDPA as Head of Islam concerning the exercise of their duties and functions. It is only a judicial review of the 1st Respondent's decision to impose a prohibition on the use of the word "Allah" by the Applicant in a publication. Since the Rulers or the YDPA cannot make any decision in respect of any publications and matters connected therewith, the issue of non justiciability does not arise;

(iv) the 1st Respondent has taken the position contrary to the contention of the 4th, 5th and 7th Respondents that he has the exclusive power to make an administrative decision to impose a condition on the Applicant's publication permit to prohibit the use of the word "Allah". The 1st Respondent consented to leave being granted and has filed an

Affidavit in Reply stating that he had the requisite powers to make such decisions and accordingly sought to justify his decision. Since he has taken such a position, any argument that only the Rulers or the YDPA has such powers or absolute discretion to determine such an issue makes a complete mockery of the 1st Respondent's stated position and the enforcement of his powers under the Act ;

(v) if this Court accedes to the 4th, 5th and 7th Respondents' contention this would mean that the 1st Respondent did not have the power and was not the proper person to decide on the prohibition of the use of the word "Allah" in the first place and surely this cannot be the correct position in law in view of the clear provisions of the Act ;

(vi) that the civil courts only decline jurisdiction on the grounds of non justiciability when it is absolutely clear that the "*judicial process is totally inept to deal with the sort of problems which it involves*" **(per Lord Diplock in CCSU(supra))**. The civil court are not only competent to do so, they are duty bound to do so especially when the issue is one that concerns the fundamental liberties of freedom of expression and religion of the Applicant under Articles 10 and 11 of the Federal Constitution respectively;

(vii) the Court had granted leave to commence judicial proceedings and thus the Court is seised with jurisdiction to hear the substantive application. This Order cannot be set aside (save the Order was made without jurisdiction in the 1st place) except by an appeal under O.53 r.9 RHC.

28. For the foregoing reasons, I dismiss the 4th, 5th and 7th Respondents' objection that the subject matter of these proceedings is non-justiciable with no order as to cost.

(b) **Position of 1st and 2nd Respondents**

29. As alluded to earlier, the learned SFC, Dato' Kamaludin is in full agreement with the submission of the 3rd to the 11 Respondents that the proceedings is non-justiciable. The salient arguments submitted by the learned SFC are:

(i) the Federal and State Constitutions recognise the YDPA and the Rulers as the protectors of the religion of Islam;

(ii) the decision of the 1st Respondent to attach a condition to the publication permit of the "Herald – The Catholic Weekly" as stated by the 1st Respondent in his Affidavit is due to national security and to avoid confusion and misunderstanding among Muslims;

(iii) there is no guarantee that the publication will only be circulated among Christians and that it will not fall into the hands of Muslims;

(iv) The "Herald – The Catholic Weekly" has gone online;

(v) it is obvious that the decision taken by the 1st Respondent had taken into account the powers of the YPDA and the Rulers in the protection of the religion of Islam and also the existence of the State Enactments pertaining to the Control and Restriction of the Propagation of Non Islamic Religions among Muslims.

30. The Court can only examine the reasons given by the 1st Respondent as decision maker to determine the validity of the grounds of challenge mounted by the Applicant. The reasons given by the Minister justifying the impugned decision are as stated in paragraph 9 (i) to (ix) above. Since there is nothing in the 1st Respondents' Affidavit either expressly or impliedly that the 1st Respondent took into account the powers of the YPDA and the Rulers in the protection of the religion of Islam, I find the contention of the 1st and 2nd Respondents that the 1st Respondent took into account the powers of the YPDA and the Rulers in the protection of the religion of Islam is flawed.

30.1 In any event I agree with the Applicant since the 1st Respondent derives his powers from the Act and even if he stated that his decision took into account the powers of the YPDA and the Rulers in the protection of the religion of Islam, the Court still has to consider whether this was a relevant consideration to take into account in light of the legislative scheme of the Act.

30.2 I agree even if the 1st Respondent cites this reason, it still remains the 1st Respondent's decision which is the subject of judicial review unless it can be established that it falls within the established category of non-justiciable matters.

30.3 With respect to the contention of the 1st and 2nd Respondents that the publication permit is governed by considerations of national security, merely citing national security is not sufficient to make a subject matter of a decision justiciable (see **Chan Hiang Leng Colin & Ors.v. Minister For Information and the Arts [1996] 1 SLR 609; Chng Suan Tze v. Minister of Home Affairs & Other Appeals[1989] 1 MLJ 69; Ahmad Yani Ismail & Anor v. Inspector -General of Police & Ors [2005] 4 MLJ 636**). The Court has to determine whether the impugned decision was in fact based on ground of national security.

30.4 With regard to the ground that the condition on the publication permit is to avoid confusion and misunderstanding among the Muslims, this goes to the merits of the substantive motion which warrants the Court to determine whether it satisfies the Anisminic principles and this does not impinge on the issue of justiciability.

30.5 With regard to the contention that the publication permit is governed by the existence of the State Enactments pertaining to the Control and Restriction of the Propagation of Non-Islamic Religions among Muslims, it is open to the Applicant in these proceedings to challenge by way of collateral attack the constitutionality of the said Enactments on the ground that s.9 infringe the Applicant's fundamental liberties under Articles 3, 10,11 and 12 of the Federal Constitution.

30.6 The Court can review the constitutionality of Federal and State legislation relied on by the decision maker following the test in **Nordin bin Salleh** (supra).

30.7 Issues on what is the "polisi kerajaan" and "arahan kerajaan" referred to in the Affidavit of the 1st Respondent and whether the word "Allah" is a proper name exclusive to Muslims in the context of the Malaysian society and whether there is an alternative word for "God" other than "Allah" for the non Muslims are questions for determination at the merits stage of these proceedings and are clearly justiciable.

30.8 For the foregoing reasons, I dismiss the 1st and 2nd Respondents' objection that the subject matter of these proceedings is non-justiciable with no order as to cost.

(c) **Position of the 11th Respondent.**

31. Learned Counsel for the 11th Respondent, Tuan Hj. Sulaiman submitted-

(i) the Rulers and the YDPA are the Heads of Religion of Islam and the protectors of that religion;

(ii) pursuant to the prerogative powers enjoyed by the Rulers and the YDPA, they have stated that the word "Allah" is special to the religion of Islam and can only be used by Muslims;

(iii) pursuant to this, anti propagation laws, namely the Non Islamic Religions (Control of Propagation Amongst Muslims) Enactments had been passed and these laws are the reflection of the Rulers and YDPA's prerogative to defend and protect Islam;

(iv) whatever the 1st and 2nd Respondents are doing is merely to ensure that the laws which the Rulers and YDPA have sought to be promulgated are observed;

(v) the impugned actions of the 1st and 2nd Respondents is merely a carrying into force of the various State Laws that are within the prerogative of the Rulers and YDPA;

(vi) since the impugned actions are merely to enforce the prerogative of the rulers and YDPA, this issue is non-justiciable.

32. I am of the view that the proceeding is justiciable on some of the grounds submitted in the reply submission made by the Applicant-

(i) the Rulers and YDPA have no prerogative powers to govern the affairs of other religions and the fact that the affairs of other religions are governed not by the Rulers and YDPA but by their own religious groups is clearly enshrined in Article 11(3) of the Federal Constitution. If any action is taken by the Rulers and YDPA which affect the affairs of non Islamic religions, such action would be construed as unconstitutional. Further, if any laws other than those set out in Article 11(4) of the Federal Constitution are passed, such laws would also be construed as unconstitutional;

(ii) the legislative intent of the State Enactments is determined by the language of the Enactments and in so determining, the Court when called upon to do so can examine the constitutionality of these Enactments in so far as they affect the fundamental liberties of non Muslims;

(iii) in any event the contention of the 11th Respondent that the 1st and 2nd Respondents' actions in making the decision dated 7.1.2009 were governed by the prerogative powers of the Rulers and YDPA is itself not supported by the 1st Respondent in his Affidavit .

32.1 For the foregoing reasons, I dismiss the 11th Respondent's objection that the subject matter of these proceedings is non-justiciable with no order as to cost.

33. The 3rd, 6th, 8th, 9th and 10th Respondents adopted the Submission of the 1st, 2nd, 4th, 5th, 7th and 11th Respondents and therefore the Court's findings at pp.48 to 55, will likewise apply mutatis mutandis.

34. As regards the other points raised in the course of the arguments, I have considered them and in my view it would not alter my conclusion in any event.

35. In conclusion in the circumstances the Court grants the Applicant the following order:

(1) an Order of Certiorari to quash the decision of the Respondents dated 7.1.2009 that the Applicant's Publication Permit for the period 1.1.2009 until 31.12.2009 is subject to the condition that the Applicant is prohibited from using the word "Allah" in "Herald – The Catholic Weekly" pending the Court's determination of the matter;

(2) Jointly the following declarations:

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

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

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

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

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

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

(3) No order as to costs.

Dated: 31.12.2009

(SGD)

SGD. (DATUK LAU BEE LAN)
Judge

Counsel for the Applicant:

Encik Porres Royan
Encik S. Selvarajah
Encik Leonard Teoh
Encik Annou Xavier and
Encik Benjamin Dawson
T/n Fernandez & Selvarajah
Peguambela & Peguamcara
No. 12-B, 2nd Floor
Jalan Yong Shook Lin
46200 Petaling Jaya
Selangor Darul Ehsan

Counsel for the 1st and 2nd Respondents:

Y.Bhg. Dato' Kamaludin bin Md. Said
Tuan Hj. Mohd Nasir bin Desa
Puan Suzana Bte Atan
Encik Arik Sanusi bin Yeop Johari
Encik Andi Razalijaya A. Dadi
Peguam Kanan Persekutuan
Jabatan Peguam Negara
Aras 5, Blok 4G7, Presint 4
No.45, Persiaran Perdana
62100 Putrajaya

Counsel for the Interveners:

Encik Mubashir bin Mansor
Encik Abdul Rahim bin Sinwan

Majlis Agama Islam Dan Adat Melayu Terengganu
Majlis Agama Islam Wilayah Persekutuan
T/n Zainul Rijal Talha & Amir
Peguambela & Peguamcara
No.15-5, Jalan USJ 9/5Q
Subang Business Centre
47620 UEP Subang Jaya
Selangor Darul Ehsan

Majlis Agama Islam Melaka
T/n Adli & Co.
Peguambela & Peguamcara
No.12A, Jalan Cempaka 1
Taman Seri Cempaka
Peringgit
75400 Melaka

Majlis Agama Islam Negeri Kedah
T/n Omayah, Nawal & Partners
Peguambela & Peguamcara
No.1562, Tingkat Satu
Jalan Kota
05000 Alor Setar
Kedah Darul Aman

Majlis Agama Islam Selangor
T/n Azra & Associates
Peguambela & Peguamcara
1008 Block A, Phileo Damansara II
Off Jalan Damansara
46350 Petaling Jaya
Selangor Darul Ehsan

Encik Mohd Tajuddin bin Abd Razak
Malaysia Chinese Muslim Association
T/n Tajuddin Razak
Peguambela & Peguamcara
NW-02-42, Cova Square
Jalan Teknologi
Kota Damansara
47810 Petaling Jaya
Selangor Darul Ehsan

Encik Ikbal Salam
Majlis Agama Islam Negeri Johor
T/n Ikbal Salam & Associates
Peguambela & Peguamcara
No.50A & 50B, Jalan Molek 2/2
Taman Molek
81100 Johor Bahru
Johor Darul Takzim

Salinan Yang Diakui Sah
14/1/2010
Setiausaha Kepada
Y.A Hakim Datuk Lau Bee Lan
Bahagian Sivil 5
Mahkamah Tinggi
Kuala Lumpur