

**A Jill Ireland bt Lawrence Bill v Menteri Bagi Kementerian  
Dalam Negeri Malaysia & Anor**

**B** HIGH COURT (KUALA LUMPUR) — APPLICATION FOR JUDICIAL  
REVIEW NO 25–256 OF 2008  
ZALEHA YUSOF J  
21 JULY 2014

**C** *Administrative Law — Judicial review — Application to quash decision  
— Eight publications in form of Audio CD confiscated — Printing Presses and  
Publication Act — Whether applicant's constitutional rights infringed  
— Customs Act 1967 — Federal Constitution arts 8 & 11*

**D** *Constitutional Law — Constitution — Infringement of — Eight publications  
in form of Audio CD confiscated — Right to practice religion — Whether  
applicant's constitutional rights infringed — Right to use 'Allah' in publication  
— Federal Constitution arts 8 & 11*

**E** The applicant sought to, inter alia, quash the decision of the respondent in  
confiscating and withholding eight publications in the form of audio CD  
which was made pursuant to s 9 of the Printing Presses and Publication Act  
1984 ('Act 301'). The publications were confiscated by a custom officer after  
**F** the applicant landed at the Sepang Low Cost Carrier Terminal. The applicant  
also, inter alia, sought for the following declaration that pursuant to art 11 of  
the Federal Constitution ('the Constitution'), it was the constitutional right of  
the applicant to import the eight CDs in the exercise of the applicant's right to  
practice her religion and right to education; pursuant to art 8 of the  
**G** Constitution, the applicant was guaranteed equality of all persons before the  
law and was protected from discrimination against citizens, inter alia, on the  
grounds of religion in the administration of law, in particular of the Act 301  
and Customs Act 1967; pursuant to arts 8 and 11 of the Constitution, the  
applicant was entitled to use and/or to continue to use the word 'Allah' and to  
**H** have access including the right to own, to possess, to use and to import  
publications which contained the word 'Allah' in the said publications  
including the eight CDs in the exercise of her freedom to practice her religion;  
and that it was the legitimate expectation of the applicant to exercise the right  
to use and/or continue to use the word 'Allah' and have and to continue to have  
**I** to access including the right to own, to possess, to use and to import published  
materials notwithstanding the use of the word 'Allah' in the said publications  
including the eight CDs in the exercise of her freedom to practice her religion.

**Held**, allowing the application in part:

- (1) Looking at the provisions of ss 9 and 9A of Act 301, it is very clear that a senior authorised officer is empowered to withhold delivery of an undesirable publication pending the decision of the Minister under s 9. What that means is that the senior authorised officer is only empowered to make an interim withholding order pending the decision of the Minister. However, when it comes to permanent order under s 9, it is the Minister who has to exercise the power. Only him and no other person. There is nothing in Act 301 which empowers the Minister to delegate it to an officer as officers and in this case senior authorised officers, are only entrusted with the power to make an interim withholding order (see para 7). A
- (2) The dual powers and authorities statutory scheme cannot be subsumed under one general heading of ‘Government’ when the clear terms of the Act 301 identifies two powers and two repository of statutory discretionary power with regard to the interim withholding and permanent withholding decisions. In other words, a statutory and discretionary power must be exercised by the person to whom the Parliament had vested the power onto and cannot be sub-delegated to any other authority or official (see paras 8 & 12). B
- (3) The decision to withhold was made by one Suzanah who was at the material time the ‘Penolong Pegawai Penerbitan’. Ministry of Home Affairs. The Minister had himself admitted that it was the decision of Suzanah. It was Suzanah who made the permanent withholding order and not the Minister. And she did it on her own capacity on the strength of an ‘Arahan Kerajaan’ (see para 13). C
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**[Bahasa Malaysia summary**

Pemohon memohon, antara lain, membatalkan keputusan responden dalam merampas dan memegang lapan penerbitan dalam bentuk audio CD yang dibuat berikutan s 9 Akta Mesin Cetak dan Penerbitan 1984 (‘Akta 301’). Penerbitan dirampas oleh pegawai kastam selepas pemohon tiba di Terminal Pengangkutan Kos Murah Sepang. Pemohon juga, antara lain, memohon untuk perisytiharan berikut bahawa berikutan perkara 11 Perlembagaan Persekutuan (‘Perlembagaan’), ia adalah hak perlembagaan pemohon untuk membawa masuk kelapan-lapan CD dalam melaksanakan hak pemohon untuk mengamalkan agamanya dan hak kepada pelajaran; berikutan perkara 8 Perlembagaan, pemohon dijamin hak sama terhadap kesemua orang di hadapan undang-undang dan dilindungi daripada diskriminasi terhadap rakyat, antara lain, atas alasan agama dalam pentadbiran undang-undang, terutamanya Akta 301 dan Akta Kastam 1967; berikutan perkara 8 dan 11 Perlembagaan, pemohon adalah berhak untuk mengguna dan/atau untuk meneruskan mengguna perkataan ‘Allah’ dan untuk mempunyai akses termasuk hak untuk mempunyai, memiliki, untuk menggunakan dan membawa masuk penerbitan yang mengandungi perkataan ‘Allah’ dalam G

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- A penerbitan tersebut termasuk lapan CD dalam melaksanakan kebebasan untuk mengamalkan agamanya; dan bahawa ia adalah jangkaan sah pemohon untuk melaksanakan hak untuk menggunakan dan/atau terus mengguna perkataan 'Allah' dan mempunyai dan berterusan mempunyai akses termasuk hak untuk mempunyai, memiliki, untuk menggunakan dan membawa masuk material
- B penerbitan meskipun penggunaan perkataan 'Allah' dalam penerbitan tersebut termasuk kelapan-lapan CD dalam melaksanakan kebebasannya untuk mengamalkan agamanya.

**Diputuskan**, membenarkan sebahagian permohonan:

- C (1) Melihat kepada kedudukan ss 9 dan 9A Akta 301, ia adalah sangat jelas bahawa pegawai kanan berkuasa diberi kuasa untuk menahan penghantaran terhadap penerbitan yang tidak diingini sementara menunggu keputusan Menteri di bawah s 9. Apa yang ia maksudkan
- D adalah bahawa pegawai kanan berkuasa hanya diberikan kuasa untuk membuat perintah penahanan sementara, sementara menunggu keputusan Menteri. Walau bagaimanapun, apabila berhadapan dengan perintah kekal di bawah s 9, adalah Menteri yang mesti menjalankan kuasa tersebut. Hanya beliau dan bukan orang lain. Tidak terdapat dalam
- E Akta 301 yang memberikan kuasa kepada Menteri untuk mewakilkannya kepada pegawai sebagai pegawai-pegawai dan dalam kes ini pegawai kanan berkuasa, hanya diberikan kuasa untuk membuat perintah penahanan sementara (lihat perenggan 7).
- F (2) Kuasa duaan dan skim statutori pihak berkuasa tidak boleh digolongkan di bawah satu tajuk umum 'Government' apabila terma jelas Akta 301 mengenalpasti dua kuasa dan dua sumber kuasa budi bicara statutori berkaitan kepada pegangan interim dan keputusan pegangan kekal. Dalam perkataan lain, kuasa statutori dan budi bicara mesti dilaksanakan oleh orang yang mana Parlimen telah meletakhakkan dengan kuasa dan
- G tidak boleh diwakilkan kepada mana-mana pihak berkuasa atau pegawai lain (lihat perenggan 8 & 12).
- H (3) Keputusan pegangan dibuat oleh seorang bernama Suzanah yang pada masa material tersebut adalah 'Penolong Pegawai Penerbitan'. Kementerian Hal Ehwal Dalam Negeri. Menteri telah mengaku bahawa ia adalah keputusan Suzanah. Adalah Suzanah yang membuat perintah pegangan kekal dan bukan Menteri. Dan dia telah membuatnya atas kapasitasnya sendiri atas kekuatan 'Arahan Kerajaan' (lihat perenggan 13).]

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**Notes**

For cases on judicial review in general, see 1 *Mallal's Digest* (5th Ed, 2015) paras 303–457.

For cases on infringement of constitution, see 3(1) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 2281–2284.

**Cases referred to**

*Booi Kim Lee v Menteri Sumber Manusia & Anor* [1999] 3 MLJ 515; [1999] 4 CLJ 121, HC (refd)

*Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374, HL (refd)

*Sabni Silk Mills (P) Ltd v ESI Corpn* [1994] SCC (5) 346, SC (refd)

*Titular Roman Catholic Archbishop of Kuala Lumpur v Menteri Dalam Negeri & Ors* [2014] 4 MLJ 765; [2014] 6 CLJ 541, FC (refd)

**Legislation referred to**

Customs Act 1967

Federal Constitution arts 8, 11

Printing Presses and Publication Act 1984 ss 2, 9, 9A

*Lim Heng Seng (Annou Xavier, Nizam Bashir and Tan Hooi Ping with him)*  
(Azri, Lee Swee Seng & Co) for the applicant.

*Munahyza bt Mustafa (Adni Razalijaya and Shamsul bin Bolhassan with him)*  
(Federal Counsel, Attorney General's Chambers) for the respondents.

*Andrew Khoo watching brief for Bible Society of Malaysia.*

*Rodney Koh watching brief for SIB Semenanjung.*

*Bobby Chew watching brief for SIB Sabah.*

*Kenny Ng watching brief for SIB Sarawak.*

*Lim Fang Sang watching brief for NECF.*

*Leonard Shim watching brief for Association Churches in Sarawak.*

*Bernard Scott watching brief for Sabah Council of Churches.*

*Joseph Lourdesamy watching brief for Titular Roman Catholic Archbishop Kuala Lumpur.*

*Philip Koh Tong Ngee watching brief for Malaysia Consultative Council of Buddhism.*

**Zaleha Yusof J**

[1] The applicant herein seeks to, inter alia, quash the decision of the respondent made vide a letter dated 7 July 2008, confiscating and withholding eight publications in the form of audio CD. The withholding of the CD was made pursuant to s 9 of the Printing Presses and Publication Act 1984 ('Act 301'). Those publications were confiscated by a custom officer after the applicant landed at the Sepang Low Cost Carrier Terminal.

- A [2] The applicant also, inter alia, seeks for the following declaration:
- (a) that, pursuant to art 11 of the Federal Constitution, it is the constitutional right of the applicant to import the eight CDs in the exercise of the applicant's right to practice her religion and right to education;
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- (b) that, pursuant to art 8 of the Federal Constitution, the applicant is guaranteed equality of all persons before the law and is protected from discrimination against citizens, inter alia, on the grounds of religion in the administration of law, in particular of the Act 301 and Customs Act 1967;
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- (c) that, pursuant to arts 8 and 11 of the Federal Constitution, the applicant is entitled to use and/or to continue to use the word 'Allah' and to have access including the right to own, to possess, to use and to import publications which contain the word 'Allah' in the said publications including the eight CDs in the exercise of her freedom to practice her religion; and
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- (d) that, it is the legitimate expectation of the applicant to exercise the right to use and/or continue to use the word 'Allah' and have and to continue to have to access including the right to own, to possess, to use and to import published materials notwithstanding the use of the word 'Allah' in the said publications including the eight CDs in the exercise of her freedom to practice her religion.
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- F Being judicial review matter, this court has to look into whether the decision is illegal or irrational or tainted with procedural impropriety. Refer to *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 (cited in *Booi Kim Lee v Menteri Sumber Manusia & Anor* [1999] 3 MLJ 515; [1999] 4 CLJ 121). In this instance, since the applicant also alleges that her rights under the constitution has been affected, the court also needs to look at the constitutionality aspect of the decision.
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#### DECISION

- H [3] I have considered the cause papers and submissions made by the parties, written as well as oral.

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[4] Section 9 of the Act 301 provides as follows:

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Undesirable publication may be refused importation

9(1) Without prejudice to anything in this Act, the Minister may refuse the importation into Malaysia or withhold delivery or return to the sender thereof outside Malaysia any publication which he is satisfied contains any article, caricature, photograph, report, notes, writing, sound, music, statement or any other thing which is likely to be prejudicial to public order, morality, security, or which is likely to alarm public opinion, or which is likely to be contrary to any law or is otherwise prejudicial or is likely to be prejudicial to public interest or national interest.

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(2) Notwithstanding subsection (1), the Minister may allow the importation or delivery of any publication after any part of the publication which he considers objectionable under any of the grounds specified in subsection (1) has been, to his satisfaction, obliterated, deleted, erased or removed.

(3) (Deleted by Act A684)

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[5] It is very clear, the power to withhold as provided by s 9 vests in the Minister. This power is distinct from that of s 9A of Act 301. Section 9A provides as follows:

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Withholding delivery pending decision of Minister

9A Where a senior authorised officer reasonably suspects that a publication contains any article, caricature, photograph, report, notes, writing, sound, music, statement or any other thing which is likely to be prejudicial to public order, morality, security, or which is likely to alarm public opinion, or which is likely to be contrary to any law or is otherwise prejudicial or is likely to be prejudicial to public interest or national interest, he may withhold delivery of such publication pending the decision of the Minister to deal with it as provided for under section 9.

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[6] The word 'Senior Authorized Officer' is defined in the interpretation section of s 2 of Act 301 as follows:

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- (a) any police officer not below the rank of assistant superintendent;
- (b) any officer of customs not below the rank of superintendent;
- (c) any officer of the Postal Services Department not below the rank of senior postal officer; and
- (d) any other public officer declared by the Minister to be a senior authorised officer for the purpose of this Act.

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[7] Looking at these two provisions of ss 9 and 9A, it is very clear to me that a senior authorised officer is empowered to withhold delivery of an undesirable publication pending the decision of the Minister under s 9. What that means is that the senior authorised officer is only empowered to make an interim

A withholding order pending the decision of the Minister. However, when it comes to permanent order under s 9, it is the Minister who has to exercise the power. Only him and no other person. There is nothing in Act 301 which empowers the Minister to delegate it to an officer as officers and in this case senior authorised officers, are only entrusted with the power to make an  
B interim withholding order.

[8] As submitted by learned counsel for the applicant, and I agree, the dual powers and authorities statutory scheme cannot be subsumed under one  
C general heading of 'Government' when the clear terms of the Act 301 identifies two powers and two repository of statutory discretionary power with regard to the interim withholding and permanent withholding decisions.

[9] The applicant has cited *Sabni Silk Mills (P) Ltd v ESI Corpn* [1994]  
D SCC (5) 346 ('Sahni Silk'), in which the Supreme Court of India had held:

From Section 94-A it does not appear that Parliament vested power in the Corporation to delegate its power on any officer or authority subordinate to. the Corporation, and also vested power in the Corporation to empower such officer or authority, to authorise any other officer to exercise the said power under Section  
E 85-B(1). If Section 94-A had a provision enabling the Corporation, not only to delegate its power to any other officer or authority subordinate to the Corporation, but also to empower such officer or authority in its own turn to authorise any other officer to exercise that power, the resolution could have been sustained on the principle indicated in the cases *Harishankar Bagla v State of M* p.7 and *Barium  
F Chemicals Ltd v Company Law Board*. As such it has to be held that the part of the resolution dated 28-2-1976, which authorises the Director General to permit any other officer to exercise the power under Section 85-B(1) of the Act is ultra vires Section 94-A.

[10] In delivering the decision above, the Supreme Court of India observed  
G the following:

In *Halsbury's Laws of England*, 4th Edn., Vol. 1, in respect of sub-delegation of powers it has been said:

H In accordance with the maxim *delegatus non protest delegate*, a statutory power must be exercised only by the body or officer in whom it has been confided, (*H. Lavender & Son Ltd. v. Minister of Housing and Local Government*<sup>3</sup>) unless sub-delegation of the power is authorised by express words or necessary implication (*Customs and Excise Comrs. v. Cure and Deeley Ltd.* 4 and *Mungoni v. Attorney General of Northern Rhodesia*<sup>5</sup>). There is a strong  
I presumption against construing a grant of legislative, judicial, or disciplinary power as impliedly authorising sub-delegation; and the same may be said of any power to the exercise of which the designated body should address its own mind.

[11] Further in *Sabni Silk*, the Supreme Court of India also observed as

follows:

The maxim *delegatus non protest delegate* was originally invoked in the context of delegation of judicial powers saying that in the entire process of adjudication a judge must act personally except insofar as he is expressly absolved from his duty by a statute. The basic principle behind the aforesaid maxim is that 'a discretion conferred by statute is prima facie intended to be exercised by the authority on which the statute has conferred it and by no other authority, but this intention may be negated by any contrary indications found in the language, scope or object of the statute'. (Vide John Willis, 'Delegatus non protest delegate, (1943) 21 Can. Bar Rev. 257,259').

[12] In other words, a statutory and discretionary power must be exercised by the person to whom the Parliament had vested the power onto and cannot be sub-delegated to any other authority or official.

[13] Now, in this instance, who actually made the said order under s 9? After scrutinising the affidavits filed by the respondent, I find that paras 6, 14 and 16 of encl 6 clearly show that the decision to withhold was made by one Suzanah bt Hj Muin who was at the material time the 'Penolong Pegawai Penerbitan' Ministry of Home Affairs. This is confirmed by the Minister himself when in para 10 of encl 15 he says as follows:

Saya merujuk kepada Affidavit Jawapan Responden Suzanah binti Haji Muin ... dan bersetuju serta mengesahkan bahawa tindakan beliau adalah selaras dengan tindakan melaksanakan dan menguatkuasakan undang-undang dan polisi kerajaan sejak tahun 1986 tersebut melalui perintah di bawah Akta 301.

In other words, the Minister has himself admitted that it was the decision of Suzanah. It was Suzanah who made the permanent withholding order and not the Minister. And she did it on her own capacity on the strength of an 'Arahan Kerajaan' issued on 5 December 1986.

[14] Suzanah is the 'Penolong Pegawai Penerbitan' of the 'Bahagian Kawalan Penerbitan Dan Teks Al-Quran'. Whether she has been declared by the Minister in accordance with s 2 of Act 301 as a senior authorised officer is another issue. But the fact remains that even if she has been declared as a senior authorised officer, she is only empowered to issue an interim withholding order pending the decision of the Minister.

[15] Accordingly, I agree with learned counsel for the applicant that the order as contained in the said letter dated 7 July 2008 is *ultra vires* Act 301. The respondent is guilty of an error of law in its action as the officer has exercised a power which she does not have. This, in my view is obviously illegal.



A [16] The applicant in this application also seeks for certain declarations concerning her rights as guaranteed by arts 8 and 11 of the Federal Constitutions. In the respondent's affidavit in encl 6, the respondent states that the applicant's action in bringing the eight CDs will lead to violation of provision of state enactments on control and restriction of propagation of non-Islamic religion among Muslim pertaining to the prohibition of certain words or phrases by non Islamic religions. Although the applicant is not challenging those Enactments, but it is my view, the issue here cannot be considered without taking into consideration the provision of those enactments; its validity and constitutionality.

C [17] The question on the usage of the word 'Allah' which the applicant argues to be her right guaranteed by arts 8 and 11 of the Federal Constitution, cannot in my view be considered in isolation without taking into consideration the validity and constitutionality of those laws as well. In *Titular Roman Catholic Archbishop of Kuala Lumpur v Menteri Dalam Negeri & Ors* [2014] 4 MLJ 765; [2014] 6 CLJ 541, the Federal Court in its majority decision had, inter alia, held as follows:

D [5] Clause 3 of art 4 of the Constitution provides that the validity of any law made by Parliament or a State legislature may not be questioned on the ground that it makes provision with respect to any matter with respect to which the relevant legislature has no power to make law, except in three types of proceedings, one of which is 'in proceedings for a declaration that the law is invalid on that ground', in which case the Federation or the State is entitled to be a party to such proceedings. Clause (4) of art 4 on the other hand provides that such proceedings may not be commenced by an individual without leave of a judge of the Federal Court. Consequently, the party seeking to challenge the validity or the constitutionality of the impugned provision must specifically ask for a declaration that the law is invalid, and such a proceeding may only be commenced with leave of a judge of the Federal Court. Further, the respective State must be made party so as to give the State an opportunity to defend the validity or constitutionality of the impugned provision. (para 40)

E [7] The constitutional questions posed in Part B of this application, which relate to the usage of the word 'Allah' in the Herald, concern the rights as guaranteed by arts 3, 8, 10, 11 and 12 of the Constitution. These questions could not be considered in isolation without taking into consideration the impugned provision. However, as it is this court's finding that a challenge on the validity and unconstitutionality of the impugned provision could not be made for the reasons stated, it is therefore not open for this court to consider the questions posed in Part B. (para 44).

I CONCLUSIONS

[18] Based on those reasons, after careful consideration of submissions of the parties, I only allow prayer (a) and (b) of this application ie that the decision of

the respondent in confiscating and withholding the eight publications be quashed and the eight publications be returned to the applicant. **A**

*Application allowed in part.*

Reported by Afiq Mohamad Noor **B**

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