ZI PUBLICATIONS SDN BHD & ANOR v. JABATAN AGAMA ISLAM SELANGOR & ORS

COURT OF APPEAL, PUTRAJAYA
UMI KALTHUM ABDUL MAJID JCA
HASNAH MOHAMMED HASHIM JCA
SURAYA OTHMAN JCA
[CIVIL APPEAL NO: WA-01(A)-255-04-2018]
9 JULY 2020

ADMINISTRATIVE LAW: *Judicial review – Certiorari – Exercise of powers in course of criminal investigation – Issuance of search warrant and seizure by enforcement officers – Whether subject to review under O. 53 of Rules of Court 2012*

CONSTITUTIONAL LAW: *Federal and State law – Islamic law enactment – Syariah Criminal Offences (Selangor) Enactment 1995, s. 16 – Whether ultra vires Federal Constitution – Purpose – To control religious publications contrary to Islam – Whether Selangor State Legislative Assembly acted within legislative power in enacting s. 16 – Whether s. 16 fell within 'precepts' of Islam within meaning of Item 1, List II-State List, Ninth Schedule of Federal Constitution – Whether s. 16 constitutional*

COMPANY LAW: *Corporate personality – Corporate veil – Prosecution against director of company at Syariah Court – Validity of – Whether attempt to penalise director for actions of company – Whether company could assume religion of shareholders – Whether Syariah Criminal Offences (Selangor) Enactment 1995 ('SCOE') only applicable to natural persons professing religion of Islam – Whether lifting of corporate veil necessary – Whether company could be prosecuted under SCOE*

The first appellant had published a book entitled '*Allah, Kebebasan dan Cinta: Keberanian Untuk Menyelaraskan Kebebasan Dengan Iman*' ('the book') which had been circulating in the local market since 19 May 2012, whilst the English version had been circulating in the local market since June 2011. The Mufti of Selangor extended his review that the book was not academic in nature and the discussions presented in the book were merely focused on the orientalist perspective of Islam and also that the author had disregarded authoritative sources that had long been established in discussing religious issues in the book. As such, the Enforcement Division of the Selangor State Islamic Religious Affairs Department ('JAIS') and Jabatan Mufti Negeri Selangor were of the strong view that the book was a clear deviation and in direct contravention of the true Islamic precepts. *Vide Gazette* Notification PU(A) 161/2012, the Deputy Minister of Home Affairs made the Printing Presses and Publications (Control of Undesirable Publications) (No. 3) Order 2012 under the Printing Presses and Publications Act 1984 prohibiting the

printing, importing, producing, reproducing, publishing, sale, issue, circulating, distributing or possessing of the book, as well as its original English version. Based on a search warrant, the employees, officers and the agents of the first respondent had raided, searched, seized and confiscated 180 copies of the book from the first appellant's office. The first to third respondents then arrested the second appellant and brought him to the JAIS office in Shah Alam and an attendance bond was issued to the second appellant for the purpose of prosecution of the second appellant at the Syariah Court. Pursuant to O. 53 of the Rules of Court 2012 ('ROC'), the second appellant filed an application for judicial review. The Federal Court had earlier granted leave to the appellants in another action to file a petition under art. 4(4) of the Federal Constitution ('FC') to declare s. 16 of the Syariah Criminal Offences (Selangor) Enactment 1995 ('SCOE') to be invalid. The petition was dismissed. However, the appellants pursued the issue on the constitutionality of the impugned section and was of the view that the Federal Court's decision was only in respect of the legislative power of the State Legislative Assembly in enacting the impugned section, not the constitutionality of the section itself. The High Court allowed the preliminary objection raised by the first to the fifth respondents that the constitutionality of the impugned section had been answered by the Federal Court and that the judicial review application be dismissed. On appeal, the Court of Appeal ordered the matter to be sent back to the High Court for the substantive hearing of the judicial review. After hearing the substantive judicial review application, the High Court dismissed the application, finding, *inter alia*, that s. 16 of the SCOE could be judicially reviewed in respect of its consistency with the FC and consequentially its validity to be determined by the High Court. Hence, this appeal.

Held (allowing appeal in part)
Per Umi Kalthum Abdul Majid JCA delivering the judgment of the court:

(1) Section 16 of the SCOE is valid and not *ultra vires* the Federal Constitution. The purpose of Selangor State Legislative Assembly ('SSLA') in enacting the impugned section was clear, that is, to control religious publications which are contrary to Islam. The impugned section was also a measure to prohibit the dissemination of any publication that contain, promote and propagate anything that is contrary to the teachings of Islam. In enacting the section, the SSLA was acting within its legislative power and the impugned section clearly fell within the scope of the 'precepts' of Islam within the meaning of item 1, List II-State List, Ninth Schedule of the FC. As such, the impugned section was valid and not *ultra vires* the FC. The question of whether the

impugned section has the effect of restricting and/or has the potential to restrict freedom of expression, as contended by the appellants that the SSLA has no power to legislate, had been answered by the Federal Court and this issue should have not been raised again, *albeit*, in a 'different' form. (paras 37 & 38)

(2) A company, unlike a natural person, is incapable of practising a religion or at the very least, incapable of professing a religion. The first appellant was a separate legal entity from its shareholders being a private company with limited liability incorporated under the Companies Act 1965. Thus, it could not assume the religion of its shareholders and the SCOE was only applicable to natural persons professing the religion of Islam unless there are express provisions in law to impose liability on a company or any other 'artificial' persons. There was no issue raised on the necessity of 'lifting the corporate veil' of the first appellant in order to find the second appellant liable for the said offence under the SCOE. The act of the first respondent in prosecuting the second appellant was wrong and was clearly an attempt to overcome the legal inability to prosecute the first appellant for a crime under the SCOE. (paras 41-43)

(3) The exercise of powers in the course of a criminal investigation is not subject to be reviewed under O. 53 of the ROC. In respect of the seizure made by the enforcement officers at the first appellant's premises, it would be perverse to limit and to construe the extent of a search warrant purely for just the act of searching purposes. The search warrant would have not served its very purpose if it did not extend the power to seize any evidence found by the enforcement officers. As such, the High Court Judge was correct in his finding that the search warrant was not amenable to judicial review. (paras 44 & 46)

Case(s) referred to:

Ah Thian v. Government Of Malaysia [1976] 1 LNS 3 FC ***(refd)***

Aron Solomon v. A Soloman & Co Ltd [1897] AC 22 ***(refd)***

Empayar Canggih Sdn Bhd v. Ketua Pengarah Bahagian Penguatkuasa Kementerian Perdagangan Dalam Negeri dan Hal Ehwal Pengguna Malaysia & Anor [2018] Supp MLJ 16 ***(foll)***

Indira Gandhi Mutho v. Pengarah Jabatan Agama Islam Perak & Ors And Other Appeals [2018] 3 CLJ 145 FC ***(refd)***

Jabatan Agama Islam Wilayah Persekutuan & Ors v. Berjaya Books Sdn Bhd & Ors [2015] 3 CLJ 461 CA ***(dist)***

Kesultanan Pahang v. Sathask Realty Sdn Bhd [1998] 2 CLJ 559 FC ***(refd)***

Sunrise Sdn Bhd v. First Profile (M) Sdn Bhd & Anor [1997] 1 CLJ 529 FC ***(refd)***

ZI Publications Sdn Bhd & Anor v. Kerajaan Negeri Selangor; Kerajaan Malaysia & Anor (Intervener) [2015] 8 CLJ 621 FC ***(refd)***

ZI Publications Sdn Bhd & Anor v. Jabatan Agama Islam Selangor & Ors [2018] 6 CLJ 364 CA ***(refd)***

Legislation referred to:

Administration of the Religion of Islam (State of Selangor) Enactment 2003, ss. 76(1), 79

Federal Constitution, arts. 4(4), 8(1), 10(1)(a), (2)(a), 121(1), Ninth Schedule List II item 1

Interpretation Acts 1948 and 1967, ss. 2, 3

Rules of Court 2012, O. 53

Syariah Criminal Offences (Federal Territories) Act 1997, s. 13

Syariah Criminal Offences (Selangor) Enactment 1995, ss. 1(2), 16, 46

For the appellants - Fahri Azzat, K Shanmuga, Maizatul Amalina & Nizam Bashir; M/s Fahri & Co

For the 1st, 2nd, 3rd, 4th & 5th respondents - Siti Fatimah Talib, Assistant Legal Advisor; Fakhrul Azman Abu Hassan & Zirwatul Hanan Abdul Rahman; M/s Azaine & Fakhrul

For the 6th respondent - Shamsul Bolhassan; SFC

[Editor's note: For the High Court judgment, please see ZI Publications Sdn Bhd & Anor v. Jabatan Agama Islam Selangor & Ors [2018] 5 CLJ 111 (overruled in part).]

Reported by S Barathi

JUDGMENT

Umi Kalthum Abdul Majid JCA:

Introduction

[1] The first appellant is ZI Publications Sdn Bhd being a company incorporated under the Companies Act 1965. It is a publisher of books.

[2] The second appellant is Mohd Ezra bin Mohd Zaid, a principal shareholder and the director of the first appellant. The second appellant professes the religion of Islam.

[3] The first respondent is the Selangor State Islamic Religious Affairs Department ('JAIS') and is a department of the State Government of Selangor. The second respondent is the Director General of the first respondent. The State Government of Selangor is the fifth respondent.

[4] The third respondent is the Selangor Chief Religious Enforcement Officer, an office that was established pursuant to s. 79 of the Administration of the Religion of Islam (State of Selangor) Enactment 2003 ('the Enactment').

[5] The fourth respondent is the Chief Syarie Prosecutor for the State of Selangor, a position established in accordance with s. 78(1) of the Enactment.

[6] The sixth respondent is the Government of Malaysia.

[7] This appeal arose from the decision of the learned High Court Judge delivered on 7 March 2018 who dismissed the appellants' application for a judicial review with costs of RM5,000 to the first to fifth respondents and costs of RM5,000 to the sixth respondent.

[8] Aggrieved with the aforesaid decision, the appellants filed this appeal therein. A

[9] For the purposes of this appeal, the parties shall be referred to as they were at the Court of Appeal.

Background Facts B

[10] The first appellant had published a book entitled "*Allah, Kebebasan dan Cinta: Keberanian Untuk Menyelaraskan Kebebasan Dengan Iman*" ("the book"). It was translated from its English version which was published by the Random House of Canada, a member of the Random House of Canada Ltd, Toronto under the title "*Allah, Liberty & Love: The Courage to Reconcile Faith and Freedom*". The English version of the book was first published on 14 June 2011 and had been circulating in the local market since sometime in June 2011. Whereas the Malay version was published in May 2012 and has been circulated in the local market at least since 19 May 2012. C

[11] Based on a letter dated 31 May 2012, from the Honourable Mufti of Selangor to the Enforcement Division of JAIS (pp. 3 to 12 appeal record, vol. 2(4)), the Honourable Mufti had extended a review of the book to the said Enforcement Division for its further action. Briefly, the book was reviewed to be not academic in nature and the discussions presented in the book were merely focused on the orientalist perspective of Islam. The author had disregarded authoritative sources that have long been established in discussing religious issues in the book. As such, the Enforcement Division of JAIS and Jabatan Mufti Negeri Selangor were of the strong view that the book was a clear deviation and in direct contravention of the true Islamic precepts. See below extracts from the review: D E F

> Kesimpulan:
>
> Penulis tidak menyatakan pendapat dan pandangan beliau berdasarkan metodologi penulisan yang seharusnya bersifat akademik dan benar. Perbahasan beliau menerusi buku ini adalah berdasarkan petikan pandangan orientalis Barat dengan mengenepikan sumber-sumber lain yang lebih tepat dan diakui kebenarannya. G
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> Hujah beliau yang begitu longgar dalam membahaskan sesuatu isu telah mencerminkan sikap dan diri beliau yang sebenar. Beliau tidak mempunyai tanggungjawab terhadap perkara yang diutarakan, malah dengan mudah menempelak pihak lain yang dirasakan tidak sealiran dengan pemikiran beliau. H
>
> Berdasarkan beberapa petikan yang ditemui oleh Bahagian Penguatkuasaan, Jabatan Agama Islan Selangor serta penemuan dan ulasan daripada Jabatan Mufti Negeri Selangor, adalah jelas bahawa buku bertajuk *Allah, Kebebasan & Cinta* karangan Irshad Manji didapati menyeleweng daripada aqidah dan syariat Islam yang sebenar. Justeru, adalah tepat apabila pihak Kementerian Dalam Negeri mengambil tindakan dengan mengharamkan buku ini daripada diedar dan dipasarkan dalam Negara." I

[12] On 29 May 2012, *vide Gazette* Notification PU(A) 161/2012, the Deputy Minister of Home Affairs on behalf and in the name of the Minister of Home Affairs, made the Printing Presses and Publications (Control of Undesirable Publications) (No. 3) Order 2012 under the Printing Presses and Publications Act 1984 prohibiting the printing, importing, producing, reproducing, publishing, sale, issue, circulating, distributing or possessing of the book as well as its original English version.

[13] On 29 May 2012, based on a search warrant dated 28 May 2012, ("search warrant") (p. 1, appeal record, vol. 2(4)) the employees, officers and the agents of the first respondent had raided, searched, seized and confiscated 180 copies of the book from the first appellant's office.

[14] The first to third respondents then arrested the second appellant and brought him to the JAIS' office in Shah Alam and an attendance bond dated 29 May 2012 was issued to the second appellant for the purpose of prosecution of the second appellant at the Syariah Court.

[15] On 9 July 2012, pursuant to O. 53 of the Rules of Court 2012 ("ROC"), the second appellant filed an application for judicial review, which was subsequently amended on 31 July 2012 and 7 March 2012. The amended judicial review application had sought *inter alia* and essentially the following reliefs:

(i) declaration that s. 16 of the Syariah Criminal Offences (Selangor) Enactment 1995 ("SCOE") is null and void being inconsistent with arts. 10(1)(a) and 8(1) of the Federal Constitution;

(ii) an order for *certiorari* quashing the action by the third respondent, his agents, servants and/or employees in raiding, searching, confiscating and seizing the book at the first appellant's premises;

(iii) an order of *certiorari* quashing the arrest and consequentially the attendance bond dated 29 May 2012 or the decision to prosecute by the fourth respondent against the second appellant;

(iv) a declaration that the SCOE and the Administration of the Religion of Islam (State of Selangor) Enactment 2003 ("Administration Enactment 2003") are Enactments which are only applicable to persons professing the religion of Islam and not to the first appellant;

(v) a declaration that according to art. 121(1) of the Federal Constitution, the court that has jurisdiction and is the appropriate and qualified forum to interpret the application of the Printing Presses and Publications Act 1984 on the SCOE, the Administration Enactment 2003 and the Syariah Criminal Procedure (State of Selangor) Enactment 2003 and determine the constitutionality of the JAIS' actions, is the High Court in Malaya and not the Syariah Court; and

(vi) a declaration that the search warrant dated 28 May 2012 is null and void.

[16] On the issue of the constitutionality of s. 16 ("the impugned section") of the SCOE to be in contravention of arts. 10(1) and 8(1) of the Federal Constitution, the Federal Court had earlier granted leave to the appellants in another action (but premised on this judicial review application) to file a petition under art. 4(4) of the Federal Constitution to declare the impugned section to be invalid. The petition was premised on the basis that the impugned section has the effect of restricting freedom of expression, a matter of which, the State Legislative Assembly has no power to legislate upon as per art. 10(2)(a) of the Federal Constitution.

[17] The Federal Court dismissed the petition on 28 December 2015 (see *ZI Publications Sdn Bhd & Anor v. Kerajaan Negeri Selangor; Kerajaan Malaysia & Anor, (Intervener)* [2015] 8 CLJ 621). The appellants however, still wished to pursue the issue on the constitutionality of the impugned section and was of the view that the Federal Court's decision was only in respect of the legislative power of the State Legislative Assembly in enacting the impugned section, not the constitutionality of the section itself.

[18] Thereafter, after this judicial review application was recommenced, on 6 September 2016, the High Court allowed the preliminary objection raised by the first to the fifth respondents that the constitutionality of the impugned section had been answered by the Federal Court and that the judicial review application be dismissed. However, on appeal to this court (see *ZI Publications Sdn Bhd & Anor v. Jabatan Agama Islam Selangor & Ors* [2018] 6 CLJ 364; [2017] MLJU 1010 CA), this court allowed the appeal and ordered the matter be sent back to the High Court for the substantive hearing of this judicial review.

[19] The learned High Court Judge, after hearing the substantive judicial review application, dismissed the application. The learned High Court Judge found s. 16 of the SCOE can be judicially reviewed in respect of its consistency with the Federal Constitution and consequentially its validity to be determined by the High Court (see *ZI Publications Sdn Bhd & Anor*, CA (*supra*) by applying *Ah Thian v. Government Of Malaysia* [1976] 1 LNS 3; [1976] 2 MLJ 112.

[20] However, the learned High Court Judge was also of the view that as the Federal Court had held that s. 16 of the SCOE was constitutional, the constitutionality of s. 16 had been fully determined by it. The learned High Court Judge distinguished this court's decision in the *Jabatan Agama Islam Wilayah Persekutuan & Ors v. Berjaya Books Sdn Bhd & Ors* [2015] 3 CLJ 461; [2015] 3 MLJ 65 (*"Berjaya Books")* as not binding on him as it could be distinguished on the facts of that case. In this case, at the time of the search and seizure, the banning of the book had been gazetted and irrespective of the *Gazette*, s. 16 creates an offence without mandating the need of *a fatwa*

nor a prohibitory order under s. 13 of the Syariah Criminal Offences (Federal Territories) Act 1997 ("SCO Act") being in *pari materia* with s. 16 of the SCOE.

[21] The learned High Court Judge also decided that the exercise of the powers in the course of a criminal investigation is not open to review under O. 53 ROC.

[22] Next, the search warrant and the seizure of copies of the book were made in the course of a criminal investigation of an offence under the SCOE pursuant to the powers conferred under the said Enactment. The learned High Court Judge was of the view that the issue raised in respect of the search warrant and seizure of the books was outside the scope of the judicial review application. The power to seize anything as evidence is provided under s. 46 of the SCOE. The investigation on the appellants was still on-going and was not subject to be reviewed.

The Appeal

[23] There are four issues to be determined in this appeal and they are as follows:

(i) whether the learned High Court Judge had misdirected himself in law in holding that s. 16 of the SCOE is constitutional and as such, the learned High Court Judge had thereby occasioned a miscarriage of justice;

(ii) whether a prior notice is required under s. 16 of the SCOE before a prosecution is carried out under the same section *vis* the *Berjaya Book*s case (*supra*);

(iii) whether the learned High Court Judge had erred in law in failing to hold that the prosecution against the second appellant, being a natural person holding the post as director of the first appellant, was illegal or irrational as it was an unlawful attempt to penalise a director for the actions of a company and/or can Islamic law be applicable against a director of a company; and

(iv) whether the learned judge had erred in law in holding that the search warrant dated 28 May 2012 was not amenable to judicial review.

[24] In respect of the first issue, the appellants argued that the Federal Court challenge was merely a legislative competency challenge. The Federal Court only focused on the exclusive jurisdiction of the State Legislative Assembly's legislative competence to enact s. 16 of the SCOE. As such, the appellants argued that any other matters expressed by the Federal Court in its judgment was beyond its jurisdictional limit and the learned High Court Judge's decision should not have been coloured by the "views" of the Federal Court on the consistency challenge side of things, in respect of whether s. 16 of the SCOE is consistent with art. 10(1)(a) read together with art. 8(1) of the Federal Constitution.

[25] The appellants further argued that the impugned in substance is a restriction on the appellants' art. 10(1)(a) rights , that is, the right to free speech and expression as it restricts the appellants' right to "… print, publish, produce, record, or disseminate in any manner any book or document or any other form of record …" on the basis of the material in question being "… contrary to Islamic law …". A B

[26] The appellants also argued that the impugned section is open-ended in nature and does not limit its application merely to dissemination "… among persons professing the religion of Islam …". The restriction imposed by the impugned section must be reasonable. The appellants argued that s. 16 was enacted unreasonably and disproportionately because the legislative field of competence merely empowers the State to enact laws relating to "… control of propagating doctrines and beliefs …" but s. 16 criminalises the dissemination of "… anything which is contrary to Islamic law …". Given the richness to the phrase of "Islamic law", the appellants argued that, a person faced with an offence under s. 16 of the SCOE would not know where the crime began or where it ended. As such, it is inconsistent with art. 10(1)(a) and art. 8 of the Federal Constitution. C D

[27] As for the issue on whether prior notice is required under s. 16 of the SCOE before a prosecution is carried out under that impugned section in view of the *Berjaya Books* case, it was the appellants' argument that this court is bound by the *Berjaya Books* decision of this court. E

[28] The appellants further contended that Islamic law cannot be applied against companies. The first appellant is a separate legal entity from its shareholders and thus it cannot assume the religion of its shareholders. In addition, a company is also incapable of professing a religion and thus, the first to the fourth respondents had exceeded their powers when they raided the first appellant's premises on 29 May 2012 and confiscated 180 copies of the book belonging to the first appellant, which was done purportedly pursuant to the SCOE when no power can be validly exercised against corporate entities under that law. F G

[29] The appellants then argued that the actions of the first to third respondents in the aforesaid search, seizure and arrest were tainted with *mala fide*, malicious and defied the principles of natural justice. The action of the first respondent in prosecuting the second appellant was also tainted with *mala fide* because the first respondent was clearly not able to charge the first appellant by virtue of the fact that the first appellant is a company, a non-Muslim and the SCOE only applies to Muslims. H

[30] Further, the appellants argued that the premise of the learned High Court Judge's decision in holding that the search warrant dated 28 May 2012 was not amenable to judicial review rests primarily on the Federal Court's decision in *Empayar Canggih Sdn Bhd v. Ketua Pengarah Bahagian Penguatkuasa Kementerian Perdagangan Dalam Negeri dan Hal Ehwal Pengguna Malaysia & Anor* [2018] Supp MLJ 16 (*"Empayar Canggih"*). I

[31] The appellants took the position that the legal principle in the aforesaid Federal Court's case ought to be confined to the reviewability of investigative powers of police officers under the Optical Discs Act 2000 with no constitutional rights or questions of constitutional demarcation of powers being asserted. Whereas in the present appeal, a number of fundamental liberties guaranteed by the Federal Constitution are being asserted and it would be contrary to the rule of law to suggest that such broad legal policy objection to review search warrants and seizures applies. The appellants contended that the principles in *Indira Gandhi Mutho v. Pengarah Jabatan Agama Islam Perak & Ors And Other Appeals* [2018] 3 CLJ 145; [2018] 1 MLJ 545 prevailed over *Empayar Canggih* (*supra*) and the search warrants and seizures are certainly subject to judicial review.

[32] Conversely, the first to fifth respondents essentially contended that the High Court has no jurisdiction to hear the judicial review application by the appellants when the Federal Court had ruled that s. 16 of the SCOE is valid and constitutional (see *ZI Publications Sdn Bhd & Anor v. Kerajaan Negeri Selangor; Kerajaan Malaysia & Anor (Intervener)* (*supra*). Thus, any challenge on the actions taken by the respondents under the SCOE can only be challenged at the Syariah Court as the subject of Islamic law is within the purview of the Syariah Court. The High Court has no jurisdiction to hear and to decide on matters pertaining to the Islamic law.

[33] The first to fifth respondents further argued that the High Court has no jurisdiction to interfere in any review or revision of all matters relating to the implementation of the procedures of the Syariah Court since the authority on the establishment, organisation and procedure in respect of the Syariah Court are provided under Item 1, State List, Ninth Schedule of the Federal Constitution.

[34] The first to fifth respondents also argued that enforcement action exercised under the SCOE is not open for judicial review and contended that the decision in *Empayar Canggih* is applicable in this case.

[35] In respect of the application of the SCOE only to Muslims, the first to fifth respondents argued on the interpretation of the word "person" to also include a company. This argument is premised on the provisions of ss. 2 and 3 of the Interpretation Acts 1948 and 1967, read together with s. 2 of the Interpretation (States of West Malaysia) (Adoption by Selangor) Enactment 1983 (Enactment No. 2 of 1983), and read together with s. 1(2) of the SCOE. The first to fifth respondents were of the view that in applying the aforesaid definition, the word "person" in s. 16 of the SCOE shall include a body of persons, corporate or unincorporated including a company incorporated under the Companies Act 1965. Hence, the first appellant, through its directors and shareholders, falls under the definition of "person".

[36] The learned Senior Federal Council ("SFC") had essentially emphasised on the constitutionality of the impugned s. 16 based on the Federal Court's decision in *ZI Publications Sdn Bhd & Anor v. Kerajaan Negeri Selangor; Kerajaan Malaysia & Anor (Intervener)*. Learned SFC also submitted that the enforcement action by JAIS is not open to review.

Our Decision

First Issue: Whether High Court Had Misdirected Itself In Law In Holding s. 16 SCOE As Constitutional

[37] On the issue of the constitutionality of s. 16 of the SCOE, we were of the view that the learned High Court Judge was correct in deciding the impugned section to be valid and not *ultra vires* the Federal Constitution. We were of the view that the purpose of Selangor State Legislative Assembly ("SSLA") in enacting the impugned section was clear, that is, to control religious publications which are contrary to Islam. We were also of the view that the impugned section is also a measure to prohibit the dissemination of any publication that contain, promote, and propagate anything that is contrary to the teachings of Islam.

[38] This court was also in agreement with the learned High Court Judge's interpretation of the Federal Court's decision in stating that the SSLA was acting within its legislative power in enacting the impugned section and that the impugned section clearly falls within the scope of the "precepts" of Islam within the meaning of item 1, List II-State List, Ninth Schedule of the Federal Constitution. As such, the impugned section is therefore valid and not *ultra vires* the Federal Constitution. It follows that the question of whether the impugned section has the effect of restricting and/or has the potential to restrict freedom of expression, a matter of which as contended by the appellants that the SSLA has no power to legislate, has been answered by the Federal Court and this issue should have not been raised again, *albeit* in a "different" form. Towards this end we quote at length below the decision of the Federal Court which to us is very clear on this issue and to which we fully subscribed:

> **Issues To Be Determined**
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> [8] The petitioners submitted the following issues to be determined by this court:
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> (a) Whether the SSLA has the power to enact a law which is restrictive and/or has the potential to restrict freedom of expression (first issue);
>
> (b) Alternatively, whether the SSLA can enact the impugned section in contravention of Part II of the Federal Constitution (second issue); and
>
> …

First Issue And Second Issue

[9] We will deal with the first two issues together. These concern the legislative power of the SSLA. Before we delve further, it is necessary for us to refer to the relevant provisions of the law relating to these issues. The starting point is art. 74 of the Federal Constitution which reads as follows:

Article 74. Subject matter of Federal and State laws.

(1) Without prejudice to any power to make laws conferred on it by any other Article, Parliament may make laws with respect to any of the matters enumerated in the Federal List or the Concurrent List (that is to say, the First or Third List set out in the Ninth Schedule).

(2) Without prejudice to any power to make laws conferred on it by any other Article, the Legislature of a State may make laws with respect to any of the matters enumerated in the State List (that is to say, the Second List set out in the Ninth Schedule) or the Concurrent List.

(3) The power to make laws conferred by this Article is exercisable subject to any conditions and restrictions imposed with respect to any particular matter by this Constitution.

(4) Where general as well as specific expressions are used in describing any of the matter enumerated in the Lists set out in the Ninth Schedule the generality of the former shall not be taken to be limited by the latter.

[10] It is clear that art. 74(2) of the Federal Constitution conferred the Legislature of a State to make laws with respect to any matter enumerated in the State List or even the Concurrent List. The matters enumerated in the State List which is relevant to the issues under discussion is item 1 which reads:

List II – State List.

1. Except with respect to the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, Islamic law and personal and family law relating to succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy, guardianship, gifts, partitions and non charitable trusts; wakafs and the definition and regulation of charitable and religious trusts, the appointment of trustees and the incorporation of persons in respect of Islamic religious and charitable endowments, institution, trusts, charities and charitable institutions operating wholly within the State, Malay customs, Zakat Fitrah and Baitulmal or similar Islamic religious revenue, mosques or any Islamic public places of worship, creation and punishment of offences by persons professing the religion of Islam against precepts of that religion, except in regard to matters included in the Federal List, the constitution,

organisation and procedure of Syariah Courts, which shall have jurisdiction only over persons professing the religion of Islam and in respect only of any of the matters included in this paragraph, but shall not have jurisdiction in respect of offences except in so far as conferred by federal law; the control of propagating doctrines and beliefs among persons professing the religion of Islam, the determination of matters of Islamic law and doctrine and Malay custom.

[11] It was the respondent's position as well as the interveners that the impugned section was enacted pursuant to art. 74(2) read together with item 1 of the State List, Ninth Schedule of the Federal Constitution which allows the SSLA to make laws with respect to creation and punishment of offences by persons professing the religion of Islam against precepts of that religion, except in regard to matters included in the Federal List. It is also their position that the impugned section is consistent with s. 2 of the Syariah Courts (Criminal Jurisdiction) Act 1965, a federal legislation conferring criminal jurisdiction to the Syariah Courts in this country in respect of offences against the precept of Islam by persons professing that religion. Section 2 of the said Act provides:

2. The Syariah Courts duly constituted under any law in a State and invested with jurisdiction over persons professing the religion of Islam and in respect of any of the matters enumerated in List II of the State List of the Ninth Schedule to the Federal Constitution are hereby conferred jurisdiction in respect of offences against precepts of the religion of Islam by person professing that religion which may be prescribed under any written law:

Provided that such jurisdiction shall not be exercised in respect of any offence punishable with imprisonment for a term exceeding three years or with fine exceeding five thousand ringgit or with whipping exceeding six strokes or with any combination thereof.

[12] Before us, counsel for the petitioners submitted that the act of the respondent in enacting the impugned section is contrary to the constitutional framework for freedom of expression in Malaysia as enshrined under art. 10 of the Federal Constitution. It was submitted that only Parliament that can enact laws to restrict speech and expression in Malaysia. Alternatively, with regard to the SSLA's purported power to legislate with respect to "… creation and punishment of offences by persons professing the religion of Islam against precepts of that religion …" enabling it to enact the impugned section, it was submitted that the said power does not extend to matters included in the Federal List.

[13] Consequently, it was submitted that as the Federal Government: is empowered to legislate on (a) "Newspaper; publication; publishers, printing and printing presses"; (b) criminal offences based on its legislative power relating to "… criminal law and procedure …" on range of matters including "… the creation of offences in respect of any of the matters included in the Federal List or dealt with by federal law …", and as

criminal offences generally related to printing are already dealt with by the federal law known as the Printing Presses and Publications Act 1984, the respondent therefore cannot enact offences on printing and printing presses.

[14] The central issue is whether the impugned section is contrary to the constitutional framework of freedom of expression as enshrined in art. 10 of the Federal Constitution. Article 10(1)(a) provides that "every citizen has the right to freedom of speech and expression". However, art. 10(1)(a) is subject to art. 10(2) which reads:

> (2) Parliament may by law imposed:
>
> (a) on the rights conferred by paragraph (a) 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.

[15] It can be seen clearly that art. 10(1)(a) of the Federal Constitution did not guarantee absolute freedom of speech and expression. This was not disputed by the petitioners, except it was argued that any such restriction can only be done by Parliament and not the Legislature of any State. It was argued that the impugned section as enacted by the SSLA, has the effect of restricting such freedom of expression which the SSLA has no jurisdiction to do so.

[16] With respect, we disagree. It is an established principle of constitutional construction that no provision of the Federal Constitution can be considered in isolation. That particular provision must be brought into view with all the other provisions bearing upon that particular subject. This court in *Danaharta Urus Sdn Bhd v. Kekatong Sdn Bhd* [2004] 1 CLJ 701; [2004] 2 MLJ 257, applied the principle of considering the Constitution as a whole in determining the true meaning of a particular provision. This court held:

> A study of two or more provisions of a Constitution together in order to arrive at the true meaning of each of them is an established rule of constitutional construction. In this regard it is pertinent to refer to *Bindra's Interpretation of Statue* 7th Ed which says at page 947-948:
>
> > The Constitution must be considered as a whole, and so as to give effect, as far as possible, to all its provisions. It is an established canon of constitutional construction that no one provision of the Constitution is to be separated from all the others, and considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purpose of the instrument ...
>
> It follows that it would be improper to interpret one provision of the Constitution in isolation from others ...

[17] Thus, in the present case, we are of the view that art. 10 of the Federal Constitution must be read in particular with arts. 3(1), 11, 74(2) and 121. Article 3(1) declares Islam as the religion of the Federation. Article 11 guarantees every person's right to profess and practise his religion and to propagate it. With regard to propagation, there is a limitation imposed by art. 11(4) which reads:

> (4) 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.

[18] In *Mamat Daud & Ors v. The Government of Malaysia* [1988] 1 CLJ 11; [1988] 1 CLJ (Rep) 197; [1988] 1 MLJ 119, this court in its majority judgment had held that art. 11(4) is the power which enables States to pass a law to protect the religion of Islam from being exposed to the influences of the tenets, precepts and practices of other religions or even of certain schools of thoughts and opinions within the Islamic religion itself. It was also stated in that case that to allow any Muslim or groups of Muslim to adopt divergent practice and entertain differing concepts of Islamic religion may well be dangerous and could lead to disunity among Muslims and therefore could affect public order in the States. Hence, it was held that it was within the power of the State to legislate laws in order to control or stop such practices.

[19] Article 74(2), as stated earlier is the power conferred on the legislature of a State to make laws in respect to any matter enumerated in the State List, Ninth Schedule. Item 1 of the State List clearly allows the Legislature of a State for "creation and punishment of offences by persons professing the religion of Islam against precepts of that religion …". Thus, there can be no doubt that the Federal Constitution allows the Legislature of a State to enact law against the precepts of Islam.

[20] Another important provision of the law, which needs be taken into view is art. 121(1A) which was introduced in 1988. It provides that the High Court which were established pursuant to art. 121(1) of the Federal Constitution shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts; a provision clearly intended in taking away the jurisdiction of the High Court in respect of any matter within the jurisdiction of the Syariah Courts.

[21] We are of the view art. 10 is to be read harmoniously with the above-mentioned articles. There can be no doubt what the SSLA did in this case was within the constitutional framework of the Federal Constitution. Clearly the SSLA was not enacting offences on printing or printing presses. The SSLA was enacting offences against the precepts of Islam. What offences and punishment that can be enacted under the item 1 of the State List was duly considered by this court in *Sulaiman Takrib v. Kerajaan Negeri Terengganu; Kerajaan Malaysia (Intervener) & Other Cases* [2009] 2 CLJ 54 (*Sulaiman Takrib*). Abdul Hamid Mohamad CJ pointed out that the creation and punishment of offences under item 1 of the State List have four limitations:

A (a) It is confined to persons professing the religion of Islam;

(b) It is against the precepts of Islam;

(c) It is not with regard to matters included in the Federal List; and

(d) It is within the limit set by s. 2 of the Syariah Courts Criminal Jurisdiction Act 1996.

B

…

[27] We have no reasons to depart from the previous decisions of this court in the above two cases. In the present case, the purpose of the SSLA in enacting the impugned section is clear, ie, to control religious
C publication which is contrary to Islam. It is also a measure to prohibit the dissemination of any wrongful belief and teaching among Muslims, through publication of any book or document or any form of record containing anything which is contrary to Islamic law. What is contrary to Islamic law is without doubt against the precepts of Islam. Thus, the SSLA was acting within its legislative power in enacting the impugned section.
D It is an offence against the precepts of Islam and precepts of Islam is not found in the Federal List. In consequence, there is no merit in the petitioners' argument that in enacting the impugned section, the SSLA was in fact enacting on a matter in the Federal List.

[28] Based on the above, we find that the impugned section enacted by
E SSLA clearly falls within the scope of precept of Islam. It is not a matter included in the Federal List and the punishment imposed is within the limit set by s. 2 of the Syariah Courts (Criminal Jurisdiction) Act 1965. The impugned section is therefore valid and not *ultra vires* the Federal Constitution.

F *Second Issue: Whether Prior Notice Is Required Under s. 16 SCOE Before Prosecution Under The Same*

[39] In respect of the second issue, the learned High Court Judge had this to say on the issue:

The *Berjaya Books* Case

G

59. I have considered the Court of Appeal in the case of *Jabatan Ugama Islam Wilayah Persekutuan & Ors Berjaya Books Sdn Bhd & Ors* [2015] 3 MLJ 65 ("the *Berjaya Books* case") referred by the Applicants' counsel. The point he stressed is where reference was made to section 13 of the Syariah Criminal Offences (Federal Territories) Act
H 1997 which is in *pari materia* with the Impugned Section, the Court of Appeal recognized that, "it would offend the sense of justice to charge a person for an offence for acts being contrary to Islamic Law when there is no reference point for members of the public to refer to in order to know the nature of the offence, such as if there had been a *fatwa*, prohibition order or any other form of notification" (at
I pp. 87-88). In other words, there was no prior notice that the Book was prohibited to Muslim.

60. The Court of Appeal formed its own view based on the facts and circumstances of the case. In that case, the third respondent was arrested by the first appellant on 30 May 2012 and was charged under s 13 of the Syariah Criminal Offences (Federal Territories) Act 1997 ('the SCO Act') for the offence of 'disseminating and distributing by way of selling the books deemed contrary to *Hukum Syarak* (Islamic Law)'. At the time of the search and seizure the books were not subject to any prohibition order issued by the second appellant (See para 8 and 9 at pp 72).

61. Further in *Berjaya Books* case the Court of Appeal was in the opinion that without any *fatwa*, public notification or prohibition order in place on 23 May 2012, to alert the public on the 'unlawful' status of the books, it offends the sense of fair play and justice in their view to accuse the respondents for being in breach of s. 13 of the SCO Act. It was contended by the senior federal counsel that there was no requirement for a *fatwa* to be issued before there can be a prosecution under s. 13 of the SCO Act. In other words, the offence under s. 13 is not contingent on a *fatwa*. The senior federal counsel further submitted that the court cannot 'inject a requirement to the legislation' when there is none. *The Court of Appeal agreed with the submission of the senior federal counsel. In fact, further state that an offence under s. 13 of the SCO act is not contingent on a fatwa or even a prohibitory order as s. 13 itself creates the offence envisaged.* (See para 30 (iii) at pp 87 and 88).

62. *In my view the facts in Berjaya Book's case is different with the facts in the present case. In the present case, at the time of the search and seizure of the books, there was already an order issued under the Printing Presses and Publications (Control of Undesirable Publications) (No. 3) Order 2012 [P.U. (A) 162/2012] on 24.05.2012 and published it in the government gazette on 29.05.2012. The very least, there was some form of notice. Therefore, Berjaya Book case can be distinguish on facts* but the law stands that *an offence under s. 13 of the SCO Act (which is in pari materia with the Section 16 of the Syariah Criminal Offences (Selangor) Enactment 1995) is not contingent on a fatwa or even a prohibitory order as s. 13 itself creates the offence envisaged.* It also applies to section 16 of the Syariah Criminal Offences (Selangor) Enactment 1995).

(emphasis added)

[40] We agreed with the finding of the learned High Court Judge that the facts in *Berjaya Book*s case can be distinguished from this case as at the time of the search and seize of the books there was already an order issued under the Printing Presses and Publications (Control of Undesirable Publications) (No. 3) Order 2012 (PU(A) 162/2012) on 24 May 2012 and published in the *Gazette* on 29 May 2012. In those circumstances, the appellants could not be heard to say they were unaware of the prohibition against the book. It is basic principle of law that ignorance of the law is no excuse. Therefore, the *Berjaya Book*s decision was properly distinguished and was not applicable on the facts of this case.

Third Issue: Whether High Court Erred Not To Hold Prosecution Against Second Appellant, Being A Natural Person, As Illegal/Irrational

[41] In respect of the third issue, we were of the view that since the first appellant is a private company with limited liability incorporated under the Companies Act 1965, it is a trite law that the first appellant is a separate legal entity from its shareholders (see the cases celebrated *Aron Solomon v. A Soloman & Co Ltd* [1897] AC 22; *Sunrise Sdn Bhd v. First Profile (M) Sdn Bhd & Anor* [1997] 1 CLJ 529; [1996] 3 MLJ 533, at p. 543). It is also very well established that a company cannot assume the religion of its shareholders.

[42] We would like to emphasise here that a company, unlike a natural person, is incapable of practising a religion or at the very least, incapable of professing a religion. This is clear from the decision of the Federal Court in the case of *Kesultanan Pahang v. Sathask Realty Sdn Bhd* [1998] 2 CLJ 559; [1998] 2 MLJ 513, as per Mohd Azmi FCJ, at p. 517, who stated as follows:

> … Therefore, in the context of s. 2, an artificial legal person, as opposed to a natural person, cannot be a "Malay" and become a subject of the Ruler of Pahang. This is because a corporation cannot speak Malay or any Malayan language and cannot profess Islam … .

[43] Thus, a company cannot profess a religion, it cannot assume the religion of its shareholders, and the SCOE is only applicable to natural persons professing the religion of Islam unless there are express provisions in the law to impose liability (criminal or civil) on a company or any other "artificial" persons. It was common ground that the SCOE does not provide expressly for a company to be held also liable for criminal offences under it, notwithstanding the definition of "person" to include a company. We were of the view that the appellants could not identify a shareholder or director who does profess the religion of Islam and thence imbue that shareholder's/director's religion to be that of the company's unless the law expressly provides for it, as for an example the various Malay Land Reservation Enactments of the various States where it is provided that certain companies are deemed to be a "Malay" for the purposes of the Enactment. Moreover, there was no issue raised on the necessity of "lifting the corporate veil" of the first appellant in order to find the second appellant liable for the said offence under the SCOE. We were of the view that the act of the first respondent in prosecuting the second appellant was wrong and was clearly an attempt to overcome the legal inability to prosecute the first appellant for a crime under the SCOE.

Fourth Issue: Whether The High Court Erred In Law In Holding Search Warrant Dated 28 May 2012 Was Not Amenable To Judicial Review

[44] In respect of the search warrant, we were of the view that the exercise of powers in the course of a criminal investigation is not subject to be reviewed under O. 53 of the ROC 2012. We agreed with the learned High

Court Judge's view that the principles enunciated in the case of *Empayar Canggih*, being a Federal Court decision, are applicable to this present appeal.

[45] In *Empayar Canggih*, the Federal Court held as follows:

> [23] The effect of the section [section 39 of Act 606] is that if there is reasonable cause to believe that an offence under Act 606 is being or has been committed on any premises, but the Assistant Controller has reasonable grounds for believing that *by reason of the delay in obtaining a search warrant* under s. 38, the investigation would be adversely affected or evidence of the commission of an offence is likely to be tampered with, removed, damaged or destroyed, the Assistant Controller may enter the premises and exercise all of the powers referred to in s 38, including the power of seizure under s. 38(2).
>
> [24] Thus it is clear to us that the seizure challenged by the appellant in its judicial review application was an act done by the respondents' officers in the exercise of a function in relation to a criminal investigation for an offence under Act 606. In our view such an exercise of power in the course of a criminal investigation is not open to review under O. 53 of the RHC. To hold otherwise would, to our mind, be exposing the criminal investigative process of all law enforcement agencies in the country to constant judicial review which surely could not have been the intention of Parliament. A balance has to be struck between the right of disgruntled persons such as the appellant, to seek redress in the form of damages for the alleged wrongful seizure of its property and the duty of the investigative agency through its officers to bring wrongdoers to face justice by arresting them and collecting, in the course of investigation, whatever evidence against them. In this connection the need to conduct prompt and unimpeded criminal investigation is well recognised by the Court (see *Ooi Ah Phua v. Officer-in-charge Criminal Investigation, Kedah/Perlis* [1975] 2 MLJ 198, *Hashim bin Saud v. Yahaya bin Hashim & Anor* [1977] 2 MLJ 116, *Datuk Seri Ahmad Said Hamdan, Ketua Suruhanjaya, Suruhanjaya Pencegah Rasuah Malaysia & Ors v. Tan Boon Wah* [2010] 3 MLJ 193). If decisions made and actions taken in the process of criminal investigation pursuant to the power given by law, such as the impugned seizure in this case are amenable to judicial review, then criminal investigative machinery may not function smoothly and efficiently as it should be. In this regard, we would approve the decision on similar point made by the Kuala Lumpur High Court in *City Growth Sdn Bhd & Anor v. The Government of Malaysia* [2006] 1 MLJ 581. In this case, the applicants sought leave to commence proceedings under O. 53 r. 3 of the RHC for an order of *certiorari* to quash an order dated 5 July 2004 made by the Deputy Public Prosecutor which was served on Hong Leong Bank Bhd and EON Bank Bhd. The orders sought to effect a seizure of, *inter alia*, movable property in the banking accounts of the applicants pursuant to s. 50(1) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('AMLA'). The crucial question for determination of

the Court was whether the said orders of the Deputy Public Prosecutor pursuant to s. 50(1) of AMLA was reviewable by way of judicial review. In his judgment, dismissing the application for leave for an order of *certiorari*, Raus J (as His Lordship then was) said:

> [11] From the above, it can be seen that the deputy public prosecutor's order was in pursuant to s. 50(1) of AMLA. Section 50(1) of AMLA is in the following words:
>
> (1) Where the Public Prosecutor is satisfied on information given to him by an investigation officer that any movable property, including any monetary instrument or any accretion to it, which is the subject-matter of an offence under subsection 4(1) or evidence in relation to the commission of such offence, is in the possession, custody or control of a financial institution, he may, notwithstanding any other law or rule of law, after consultation with Bank Negara Malaysia, the Securities Commission or the Labuan Offshore Financial Services Authority, as the case may be, by order direct the financial institution not to part with, deal in, or otherwise dispose of such property or any part of it until the order is revoked or varied.
>
> [12] Looking at the order of the deputy public prosecutor as well as the provision of s. 50(1) of AMLA, I am of the view that the order of the deputy public prosecutor *is not reviewable* under O. 53 of the RHC. *To me, s. 50(1) of AMLA is part and parcel of the investigation process into an offence under s. 4(1) of the AMLA.* It appears that in order to facilitate the investigation into the offence of money laundering, the law has provided with the public prosecutor the power to assist the investigating officer. Clearly, s. 50(1) of AMLA was enacted to enable the public prosecutor or his Deputy to make *an order of seizure of movable properties in the possession of the financial institutions* by ordering the financial institutions not to part, deal in, or otherwise dispose of such property or any part of it until the order is revoked or varied. Thus, by issuing the said orders the deputy public prosecutor was merely exercising a function under AMLA.
>
> [13] It has been said before that not all decisions and action of a public officer is reviewable by the court. In *R v. Sloan* [1990] 1 NZLR 474, Justice Hardie Boys said:
>
> > … *it is not every decision made under statutory authority that is subject to judicial review. A decision must go beyond what is merely administrative or procedural* … or the exercise of a function rather than a power… Quite plainly, the conclusions reached by the inspector here are of this kind and so are not reviewable. *To hold otherwise would, as Mr Neave submitted, open up the investigation process of all law enforcement agencies to constant judicial review; and that cannot have been the intention of Parliament.*

> [14] Similarly, in *Ahmad Azam bin Mohamed Salleh & Ors v. Jabatan Pembangunan Koperasi Malaysia & Ors* [2004] 4 MLJ 86, I held that the public officers exercising a function under the Cooperative Societies Act 1993, is not reviewable under O. 53 of the RHC.
>
> [15] *Likewise in this case, the order of the deputy public prosecutor under s. 50(1) of AMLA is also not reviewable. This must be so, otherwise if all decisions and action of public authority of this nature are amendable to court's review, then the government machinery may not be able to function smoothly. The investigation process of all law enforcement agencies will be open to constant judicial review. To borrow the words of Justice Hardie Boys in R v. Sloan 'that cannot have been the intention of Parliament'.*
>
> [16] It is submitted by learned counsel for all applicants that the issuing of the s. 50(1) order, the deputy public prosecutor has crippled their business and has further failed to appreciate that the said orders would subject them and its directors and officers to liabilities resulting from their inability to utilise its funds. But as stated earlier, the s. 50(1) order is to secure the evidence for the purpose of criminal prosecution under s. 4(1) of AMLA. It is not an administration decision but a decision in relation to criminal investigation. Thus, the rights of all applicants in the four cases lies in the criminal, as well as civil law and not in an administration action. The deputy public prosecutor was performing his duties under s. 50(1) of AMLA and cannot be made accountable by way of judicial review.
>
> [25] *Similarly in the present appeal, the seizure was made in the course of a criminal investigation of an offence under Act 606 pursuant to the powers conferred under the Act. Such seizure clearly is not amenable to judicial review. The Appellant was not without redress. It could have filed a private law writ action for damages.* Indeed, s. 48 of Act 606 provides for a cause of action for recovery of damages if a seizure is made without reasonable cause. (emphasis added)

[46] In respect of the seizure made by the enforcement officers at the first appellant's premises, we were of the view that it would be perverse to limit and to construe the extent of a search warrant purely for just the act of searching purposes. We were once again in agreement with the learned High Court Judge in construing the words "menggeledah tiap-tiap bahagian dan rumah" to include the act of searching evidence and to seize the evidence, if any. The search warrant would have not served its very purpose if it did not extend the power to seize any evidence found by the enforcement officers. As such, the learned High Court Judge was correct in his finding that the search warrant was not amenable to judicial review.

Conclusion

[47] Based on the above-mentioned reasons, it was our unanimous decision that this appeal be allowed in part. The High Court order dated 7 March 2018 was set aside to the extent in respect of prayer 4, only in respect of the second appellant, and prayer 8 only in respect of the second appellant, wherefor we allowed the same.

[48] Consequently, it was also our unanimous decision to remit the matter to the High Court for an assessment of damages suffered by the second appellant, in respect of prayer 8 of the judicial review application.

[49] We also ordered costs of RM10,000 be paid by the first to fifth respondents to the second appellant.