Lina Joy v
Majlis Agama Islam Wilayah Persekutuan & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W–01–29 OF 2001
GOPAL SRI RAM, ABDUL AZIZ MOHAMAD AND ARIFIN ZAKARIA JJCA
19 SEPTEMBER 2005

Administrative Law — Exercise of administrative powers — Decision or order of — National Registration Department — Refusal to delete word 'Islam' from national registration card without certificate or order from Syariah Court — Whether decision valid — National Registration Regulation 1990 reg 14

Constitutional Law — Fundamental liberties — Freedom of religion — Conversion out of Islam — Proof of amendment of national registration identity card to delete the word 'Islam' — Whether certificate or order from Syariah Court necessary — National Registration Regulations 1990 reg 14

The appellant was born a Muslim and her name originally was Azlina bte Jailani. In 1990 she claimed to have believed fully in Christianity and was subsequently baptised. She applied to the National Registration Department ('the NRD') to have her name changed at first to Lina Lelani and later to Lina Joy on the grounds of her change of religion. Her change of name was subsequently allowed, but the word 'Islam' was stated in her National Registration Identity Card ('NRIC'). She submitted proof of her change of religion and applied to the NRD to have the word 'Islam' deleted from her NRIC. However, the NRD requested for the appellant to submit a certificate and/or order from the Syariah Court.

The issue was whether the NRD was right in law in rejecting the appellant's application under reg 14 of the National Registration Regulations 1990 ('the 1990 Regulations') to have the statement of her religion as 'Islam' deleted from her NRIC and in requiring a certificate and/or order from the Syariah Court.

The respondent relied on para (cc)(xiii) of reg 4 that the Director General is entitled to call for additional information from a person applying for a change of name under reg 14. Therefore, there was nothing illegal in the Director General requesting the appellant to produce a certificate and/or order from the Syariah Court.

However, counsel for the appellant submitted that reg 4(cc)(xiii) only permits the Director General to request for information in respect of the particulars furnished by the appellant. So, in the present instance the Director General would have been entitled to ask the appellant to produce her baptismal certificate to show that she was in fact a Christian as stated in her application form. Accordingly, the request for the order from the Syariah Court was not a request authorised by reg 4(cc)(xiii).

Held, by majority dismissing the appeal:

(1) (per **Abdul Aziz Mohamad JCA**, **Arifin Zakaria JCA** concuring) Inthe appellant's application to NRD, she in effect stated that the error in her identity card was in the statement of her religion as 'Islam', which therefore she wanted removed. It amounted to her saying that she had renounced Islam. The NRD could therefore require her to produce documentary evidence to support the accuracy of her contention that she was no longer a Muslim (see para 31).

(2) (per **Abdul Aziz Mohamad JCA**, **Arifin Zakaria JCA** concuring) Thefact that whether a person had renounced Islam is a question of Islamic law that was not within the jurisdiction of the NRD and that the NRD was not equipped or qualified to decide. It was because renunciation of Islam was a matter of Islamic law on which the NRD was not an authority that it adopts the policy of requiring the determination of some Islamic religious authority before it could act to remove the word 'Islam' from a Muslim's identity card. The policy was a perfectly reasonable one (see para 34).

(3) (per **Gopal Sri Ram JCA** dissenting) An order from the Syariah Court would do nothing to support the accuracy of the particular that the appellant was a Christian. However the baptismal certificate dated 11May 1998 produced by the appellant in evidence amply supported the accuracy of the particular that the appellant was a Christian. Regulation 14(2) requires an applicant to state in his or her statutory declaration the reason for the change of name. In the appellant's case, she stated that her reason for the change of name was that she was now a Christian. Accordingly, there was nothing in reg 4(cc)(xiii) that supported the action of the Director General in this case (see para 58). It followed that an order or certificate from the Syariah Court was not a relevant document for the processing of the appellant's application. It was not a document prescribed by the 1990 Regulations. Nor was it a particular that a registration officer was entitled to call for as a particular under reg 4(cc)(xiii) (see para 59). By requiring the production of the said order/certificate, the Director General took into account an irrelevant consideration when deciding not to effect the amendment to the appellant's NRIC. That, of course, vitiated the decision not to delete the word 'Islam' from the appellant's NRIC (see para 60).

(4) (per **Gopal Sri Ram JCA** dissenting) Where a public decision-maker takes extraneous matters into account his or her decision is null and void and of no effect. Therefore, the Director General's decision in refusing to effect the amendment to the appellant's NRIC without an order/certificate of the Syariah Court was null and void and of no effect (see para 64).

(4) (per **Gopal Sri Ram JCA** dissenting) It was conceded on behalf of the Director General that before 1 October 1999 there was no provision in the 1990 Regulations that mandated the statement of a person's religion in his or her NRIC. So, if the Director General had approved the appellant's application as he was bound by law to do at the time the appellant's application to the NRD was made, the present problem would never have arisen (see para 65).

[**Bahasa Malaysia summary**

Perayu dilahirkan sebagai seorang beragama Islam dan nama asalnya adalah Azlina bte Jailani. Pada 1990 beliau mendakwa telah mempercayai sepenuhnya agama Kristian dan telah kemudiannya dibaptiskan. Beliau memohon kepada Jabatan Pendaftaran Negara ('JPN') untuk menukar namanya pertama kali kepada Lina Lelani dan kemudiannya kepada Lina Joy atas dasar pertukaran agama. Pertukaran namanya kemudiannya telah dibenarkan, tetapi perkataan 'Islam' tertera pada Kad Pengenalan ('KP') beliau. Beliau telah mengemukakan bukti berkenaan pertukaran agamanya dan memohon kepada JPN untuk memadamkan perkataan 'Islam' daripada KP beliau. Walau bagaimanapun, JPN telah meminta perayu untuk mengemukakan sijil dan/atau perintah daripada Mahkamah Syariah.

Isunya adalah sama ada JPN betul dalam menolak permohonan perayu di bawah per 14 Peraturan Pendaftaran Kebangsaan 1990 ('Peraturan 1990') untuk kenyataan agamanya sebagai 'Islam' dipadamkan daripada KP beliau dan dalam meminta sijil dan/atau perintah daripada Mahkamah Syariah.

Pihak responden bergantung kepada perenggan (cc)(xiii) per 4 yang menyatakan Ketua Pengarah adalah berhak untuk meminta maklumat tambahan daripada seseorang yang memohon untuk pertukaran nama di bawah per 14. Oleh itu, tiada apa-apa yang menyalahi undang-undang bagi Ketua Pengarah untuk meminta perayu mengemukakan sijil dan/atau perintah daripada Mahkamah Syariah.

Walau bagaimanapun, peguamcara bagi perayu menghujahkan bahawa per4(cc)(xiii) hanya membenarkan Ketua Pengarah untuk meminta maklumat berkenaan dengan butir-butir yang telah dikemukakan oleh perayu. Oleh itu, dalam kes sekarang ini, Ketua Pengarah berhak meminta perayu untuk mengemukakan sijil pembaptisan beliau untuk menunjukkan bahawa beliau dengan sebenarnya adalah seorang beragama Kristian seperti yang dinyatakan dalam borang permohonannya. Berikutan dengan itu, permintaan bagi perintah daripada Mahkamah Syariah bukanlah merupakan permintaan yang sah dibawah per 4(cc)(xiii).

Diputuskan, dengan majoriti menolak rayuan itu:

(1) (oleh **Abdul Aziz Mohamad HMR, Arifin Zakaria HMR** bersetuju) Dalam permohonan perayu kepada JPN, beliau telah menyatakan bahawa kesilapan pada kad pengenalannya adalah berkenaan dengan kenyataan agamanya sebagai 'Islam', yang mana beliau mahu dipadamkan. Ini adalah sama seperti beliau menyatakan bahawa beliau telah keluar daripada Islam. JPN oleh itu boleh meminta beliau untuk mengemukakan keterangan dokumentari untuk menyokong ketepatan kenyataan beliau bahawa beliau bukan lagi beragama Islam (lihat perenggan 31).

(2) (oleh **Abdul Aziz Mohamad HMR**, **Arifin Zakaria HMR** bersetuju) Fakta sama ada seseorang itu telah keluar daripada Islam adalah merupakan persoalan undang-undang Islam yang bukan di bawah bidangkuasa JPN dan JPN adalah tidak berkebolehan atau layak untuk memberi keputusan. Ini adalah kerana keluar Islam adalah merupakan hal ehwal undang-undang Islam yang mana JPN bukanlah pihak yang berkuasa yang membuatkannya mengamalkan polisi untuk meminta penetapan daripada pihak berkuasa agama Islam sebelum ia boleh bertindak untuk memadamkan perkataan 'Islam' daripada kad pengenalan seseorang yang beragama Islam. Polisi tersebut adalah sememangnya berpatutan (lihat perenggan 34).

(3) (oleh **Gopal Sri Ram HMR** menentang) Perintah daripada Mahkamah Syariah tidak akan memberi apa-apa kesan untuk menyokong ketepatan berkenaan butir-butir bahawa perayu adalah seorang yang beragama Kristian. Walau bagaimanapun, sijil pembaptisan bertarikh 11 Mei 1998 yang dikemukakan oleh perayu dengan secukupnya telah menyokong ketepatan butir-butir bahawa perayu beragama Kristian. Peraturan 14(2) mengehendaki seseorang pemohon untuk menyatakan dalam akuan berkanunnya sebab bagi pertukaran nama tersebut. Dalam kes perayu, beliau telah menyatakan bahawa sebab pertukaran nama adalah kerana beliau sekarang adalah seorang Kristian. Berikutan dengan itu, tiada apa-apa dalam per 4(cc)(xiii) yang menyokong tindakan Ketua Pengarah dalam kes ini (lihat perenggan 58). Oleh itu arahan atau sijil daripada Mahkamah Syariah bukan merupakan dokumen yang relevan untuk memproses permohonan perayu. Ia bukanlah dokumen yang ditetapkan dalam Peraturan 1990. Ia juga bukan merupakan butir-butir yang boleh diminta oleh pegawai pendaftar sebagai butir-butir di bawah per 4(cc)(xiii) (lihat perenggan 59). Dengan meminta perintah/sijil tersebut dikemukakan, Ketua Pengarah telah mengambil kira satu pertimbangan yang tidak relevan semasa membuat keputusan untuk tidak membuat pertukaran kepada KP perayu. Ini tentunya membuatkan keputusan untuk tidak memadamkan perkataan 'Islam' daripada KP perayu tidak sah (lihat perenggan 60).

(4) (oleh **Gopal Sri Ram HMR** menentang) Di mana pembuat keputusan awam mengambil kira perkara yang tidak berkaitan keputusan beliau

adalah tidak sah dan terbatal dan tidak mempunyai kesan. Oleh itu, keputusan Ketua Pengarah untuk menolak untuk membuat perubahan kepada KP perayu tanpa perintah/sijil daripada Mahkamah Syariah adalah tidak sah dan terbatal dan tidak mempunyai kesan (lihat perenggan 64).

(5) (oleh **Gopal Sri Ram HMR** menentang) Adalah diakui bagi pihak Ketua Pengarah bahawa sebelum 1 Oktober 1999 tiada peruntukan dalam Peraturan 1990 yang memandatkan pernyataan agama seseorang di dalam kad pengenalannya. Jadi, sekiranya Ketua Pengarah telah meluluskan permohonan perayu sepertimana yang diwajibkan oleh undang-undang ke atas beliau semasa permohonan perayu kepada JPN dibuat, masalah sekarang ini tidak akan timbul (lihat perenggan 65).]

Notes

For cases on exercise of administrative powers generally, see 1 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 28–90.

For cases on freedom of religion, see 3(2) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 1790–1800.

Cases referred to

Anisminic Ltd v Foreign Compensation Commission [1969] 2 AC 147 (refd)
Associated Provincial Picture Houses Ltd v Wednesbury Corp [1948] 1 KB 223 (refd)
Bharat Bank Ltd Delhi v The Employees of the Bharat Bank Ltd Delhi AIR 1950 SC 188 (refd)
Council of Civil Service Unions & Ors v Minister for the Civil Service [1984] 3 All ER 935 (refd)
Ismail bin Suppiah v Ketua Pengarah Pendaftaran Negara (R–1–24–31 of 1995) (refd)
Jilubhai Nanbhai Khachar v State of Gujarat AIR 1995 SC 142 (refd)
Marathei v JG Containers (JV) Sdn Bhd [2003] 2 MLJ 337 (refd)
R v The War Pensions Entitlement Appeal Tribunal; ex p Bott (1933) 50 CLR 228 (refd)
Soon Singh a/l Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah [1999] 1 MLJ 489 (refd)

Legislation referred to

Administration of Islamic Law (Federal Territory) Act 1993
Administration of Islamic Law Enactment 1978 s 141(2)
Federal Constitution art 11 cl (1), art 160 cl (2), art 121 cl (1A)
National Registration Regulations 1990 reg 4, (cc)(xiii), 5(2), 11(4), 14, (1), (2), (4), 28, First Schedule

Appeal from: Originating Summons No R2–24–30 of 2000 (High Court, Kuala Lumpur)

Cyrus Das (Benjamin John Dawson and Yapp Hock Swee with him) (Benjamin Dawson) for the appellant.

Hj Sulaiman Abdullah (Halimatun Sa'diah Abu Ahmad with him) (Zain & Co) for the Majlis Agama Islam Wilayah Persekutuan.

Umi Kalthum bte Abdul Majid (Azizah Hj Nawawi, Suzana Atan and Osman Affendi bin Mohd Shalleh with her) (Federal Counsels) for the Government of Malaysia and Ketua Pengarah Pendaftaran Negara.

Malik Imtiaz Sarwar (Haris Ibrahim with him) on watching brief for the Bar Council Malaysia.

Abdul Aziz Mohamad JCA (delivering majority judgment):

[1] The appellant was born on 8 January 1964 of Malay parents practising the religion of Islam. She was therefore born a Muslim and her name originally was Azlina bte Jailani. Claiming that she had never believed in Islam, that since 1990 she had believed fully in Christianity and had been attending Mass every Sunday, and that on 11 May 1998 she was baptised, and exhibiting the certificate of baptism, by an originating summons dated 15 May 2000, when she was 36, she sought in the High Court certain declarations against the Majlis Agama Islam Wilayah Persekutuan, the first defendant, and the Government of Malaysia, the second defendant. The declarations were sought on the basis of cl (1) of art 11 of the Federal Constitution, which guarantees to every person 'the right to profess and practise his religion', which she contended gave her absolute freedom to renounce Islam and become a Christian, which could not validly be restricted or controlled by any law, such as the Administration of Islamic Law (Federal Territory) Act 1993, by the Syariah Court, or by any other authority. The effect of the declarations would be to uphold her contention and confirm her status as a Christian, so that, she hoped, her progress in life would no longer be hampered by any uncertainty as to her religion or by any claim that she is a Muslim. As a consequence of the declarations, she also sought an order that the defendants enter in whatever records or registers about her that may be in their possession the fact that she had renounced Islam. In her affidavit in support of her application she set out the problems and fears that she would continue to face unless the declarations and order were granted. As to fears, she referred to certain reports in the press of talk from certain quarters of taking action against Muslims who renounce Islam. Of problems, she highlighted the problem of deleting the word 'Islam' from her identity card, saying that she desired to contract a non-Muslim marriage and set up home and have a family, but so long as her identity card shows that she is a Muslim she would not be able to achieve her desire. What had happened was that the National Registration Department ('the NRD') had refused to accept her application for the deletion.

[2] The Majlis and the Government did not reply to the appellant's affidavit, so that there was no reply to her averments of fact, such as those as to her baptism and the problem about her identity card. They instead separately applied for the striking out of her originating summons on the ground that it

is the Syariah Court, and not the High Court, that has jurisdiction to decide the issues in the originating summons. In particular, the Government, seeing that the declarations and order that the appellant sought were sought on the basis of her claim that she had renounced Islam, contended that the question of renunciation of Islam lies solely and absolutely within the jurisdiction of the Syariah Court.

[3] The learned judge heard the originating summons and dismissed it. Among his reasons were the following. The appellant being originally a Malay, by reason of the definition of 'Malay' in cl (2) of Article 160 of the Federal Constitution, with its requirement of professing the religion of Islam, the appellant will remain a Malay to her dying day and cannot renounce Islam. The freedom to profess and practise the religion of one's choice guaranteed by cl (1) of art 11 does not include freedom of choice of religion. Only the Syariah Court is competent to determine the question of renunciation of Islam by a Muslim. With the dismissal of the originating summons, the judge found the defendants' striking-out applications to be academic and struck them out.

[4] Although in the appeal before us the appellant's counsel, Dato' Dr Cyrus Das, began his oral submission by dealing with cl (1) of art 11 and cl(1A) of art 121 (which denies to the High Court jurisdiction in respect of any matter within the jurisdiction of the Syariah Court) and the related authorities, with the aim of showing that cl (1) of art 11 does guarantee the right of choice of religion and that the High Court has jurisdiction to grant the declarations and order that the appellant sought, there came a point when he informed the court that the appeal could be dealt with purely as one that raises an administrative law question relating to the matter of the appellant's identity card, namely, whether the NRD had made an error in its refusal to delete the word 'Islam' from the appellant's identity card. Ultimately it was agreed that the only issue that we had to decide was whether the NRD was right in law in rejecting the appellant's application under reg 14 of the National Registration Regulations 1990 ('the 1990 Regulations') to have the statement of her religion as 'Islam' deleted from her identity card and in requiring a certificate or order from the Syariah Court. The Director General of National Registration ('the Director General') was then added as the third respondent in the appeal and the parties were given liberty to exchange affidavits only upon the issue as framed. I proceed now to set out the facts relating to the identity card question as disclosed by the affidavits that were subsequently filed and the appellant's earlier affidavit in support of her originating summons.

[5] On 21 February 1997, before the date on which, according to her, she was baptised, the appellant, using Form JPN 5/1 entitled 'Borang Laporan Untuk Penukaran Nama Dalam Kad Pengenalan', which may be translated as 'Report Form for Change of Name in Identity Card', reported to the NRD the fact of change of her name from Azlina bte Jailani, the name in her identity

card at that time, which was one bearing No 7220456 and which I believe was an identity card issued under the National Registration Regulations 1960, to Lina Lelani. In the submissions in the appeal, that report was referred to as the appellant's first application.

[6] According to sub-reg (1) of reg 14 of the 1990 Regulations, which repealed the 1960 Regulations, a person registered under the 1990 Regulations, as the appellant was deemed to be by sub-reg (1) of reg 28 of the 1990 Regulations, who changes his name 'shall forthwith report the fact to the nearest registration office and apply for a replacement identity card with the correct particulars'. Sub-reg (1) provides as follows:

> (1) A person registered under these Regulations who:
>
> (a) changes his name;
>
> (b) acquires the citizenship of Malaysia or is deprived of his citizenship of Malaysia; or
>
> (c) has in his possession an identity card containing any particular, other than his address, which is to his knowledge incorrect.
>
> shall forthwith report the fact to the nearest registration office and apply for a replacement identity card with the correct particulars.

[7] It is to be noted that sub-reg (1) requires, first, a report of the fact of change of name and then an application for a replacement identity card bearing the new name.

[8] Sub-reg (2) as it stood on 21 January 1977, and until it was amended in 2001 by PU (A) 232/2001, provided as follows:

> (2) Any person registered under these Regulations who apply (sic) for a change of name under sub-reg (1) shall furnish the registration officer with a statutory declaration to the effect that he has absolutely renounced and abandoned the use of his former name and in lieu thereof has assumed a new name and the reason for such change of name shall also be stated in the statutory declaration.

[9] It would seem, by the words 'apply for a change of name under sub-reg (1)', that the report and the application mentioned in sub-reg (1) are treated by sub-reg (2) as together constituting the process of application for a change of name. It is to be noted that sub-reg (2) requires the reason for the change of name to be stated in the statutory declaration. The appellant, with her report form, did furnish a statutory declaration dated 14 February 1997 in which she gave for the change of name the reason that she had renounced Islam for Christianity and intended to marry a Christian.

[10] By letter dated 11 August 1997, the Director General, treating the appellant's report as an application for a change of name, informed the appellant that her application was refused. No reasons were stated in the letter. In the appeal the Director General explained by affidavit that the application was

refused because the NRD had no jurisdiction to approve an application for a change of name by reason of change of religion without documentary proof of the change of religion, which in the case of the appellant would, he said, be a certificate or order from the Syariah Court or any appropriate Islamic religious authority confirming that she had renounced Islam, of which there was none.

[11] On 11 May 1998, according to the appellant, she was baptised.

[12] On 15 March 1999 she made another attempt to have her name in her identity card changed. By that time she had been issued with an identity card under the 1990 Regulations, which bore the number 640108–10–5038, the name Azlina bte Jailani and the date 24 March 1997, but did not state her religion. She first made, also by Form JPN 5/1, which was dated 15 March 1999, areport of the fact of change of name, as required by sub-reg (1) of reg 14, this time from Azlina bte Jailani to Lina Joy. As required by sub-reg (2), she also submitted a statutory declaration dated 15 March 1999 in which she gave her conversion to Christianity as the reason for the change of name. About four months later she submitted another statutory declaration dated 2 August 1999 in which she gave as her reason for the change of name that of mere choice and not change of religion. The appellant gave the following explanation to the court for the second statutory declaration. She said that since there had been no response to her report of 15 March 1999, in July 1999 she went to the NRD office in Petaling Jaya to enquire. The officer who attended to her advised her that since her application was only for change of name and her identity card did not state her religion, to avoid any difficulty to the NRD in processing her application she should not give the ground of change of religion in her statutory declaration. He advised her to resubmit the report form dated 15 March 1999 with a fresh statutory declaration. So on 2 August 1999 she resubmitted the report form dated 15 March 1999 with the new statutory declaration dated 2 August 1999.

[13] It was more than two months later, on 22 October 1999, that the NRD wrote to the appellant to say that it had approved the change of name from Azlina bte Jailani to Lina Joy. The appellant was told to apply, as required by sub-reg (1) of reg 14, for a new identity card with the new name.

[14] Although the Director General, in para 10 of his affidavit dated 27January 2005, denied the appellant's averment as to the advice given to her about the need to submit a fresh statutory declaration, in para 11.2 of the same affidavit the Director General said that the change of name was approved because the reason given for the change was not change of religion. The implication is that if the reason had been change of religion the change of name would not have been approved. The Director General's statement therefore is consistent with the appellant's account of what the officer attending to her had advised her as to the need for another statutory declaration. The advice

given by the attending officer and the statement of the Director General show two things. First, as far as mere changing of name was concerned, the NRD was willing to help the appellant. Instead of rejecting the application outright, as it did to the first application, it advised the appellant to resubmit the report form with a fresh statutory declaration. Second, the NRD was unwilling to entertain the appellant's wish to change her name if the ground for it was change of religion, because in allowing the change of name it would be accepting the change of religion as established, which it was not prepared to do without confirmation by some appropriate Islamic religious authority that the appellant was no longer a Muslim. In other words, it was not prepared to assume the function of, or bear responsibility for, finding that the appellant had renounced Islam.

[15] The appellant accordingly applied for a replacement of her identity card No 640108–10–5038 on 25 October 1999. The application form that she used, JPN KP01, required her to state her religion. She stated that it was Christianity. That was the appellant's second application.

[16] At this juncture it is appropriate to mention two amendments to the 1990 Regulations which were deemed to have come into force retrospectively on 1 October 1999, that is, even before the NRD's letter of approval of change of name, which was dated 22 October 1999. One amendment was as to the particulars to be given to the registration officer under para (c) of reg 4 by an applicant for an identity card, including a replacement identity card. A new particular was added as sub-para (iva) of para (c), namely, 'his religion (only for Muslims)'. Previously no one had to provide particulars of his religion. Now a Muslim would have to state his religion. The other amendment was as to the particulars that an identity card shall contain, as required by sub-reg (2) of reg 5. The particulars are in the First Schedule. The First Schedule was replaced by a new one which included 'Religion (only for Muslims)' as one of the particulars that an identity card shall contain. Previously there was no requirement for an identity card to contain the religion of the holder and the identity cards that had been issued so far to the appellant had not stated her religion. Although the amendments were published only on 1 March 2000, under PU(A) 70/2000, the fact that they were deemed to have come into force on 1 October 1999 meant that the NRD had been implementing them since that date. That probably accounts for the form that the appellant used containing a requirement to state her religion.

[17] It was probably as a response to the appellant's stating her religion in the form as Christianity that an officer wrote under item 37 of the form, for Remarks: 'Arahan En Rahim agama pemohon dikekalkan kepada Islam', that is, En Rahim's instruction that the applicant's religion remain as Islam. The Director General in para 11.5 of his affidavit dated 27 January 2005 explained that the instruction was given because the NRD's records showed that the appellant was a Muslim and there was no documentary proof from a Syariah Court or any other Islamic religious authority that she had renounced Islam.

[18] Because of the new requirement that the identity card of a Muslim must state her religion and because the NRD was not willing to accept that the appellant had renounced Islam, when the appellant's replacement identity card No 640108–10–5038 was issued with the name Lina Joy, it also bore 'Islam' as her religion. Therefore as far as change of name was concerned, which was what the appellant applied for, she literally got what she wanted, but her motive in wanting the change of name, which was so that she would no longer be taken for a Muslim, was frustrated.

[19] The reverse of the replacement identity card also gave her original name, Azlina bte Jailani. Concerning this, I may mention that ever since the 1990 Regulations came into being, by virtue of sub-reg (4) of reg 11 and sub-reg (4) of reg 14 the NRD has been required to keep a separate register of change of name and to record in it the former name and the new name. But the requirement of having the former name stated on the reverse of the replacement identity card was a new requirement brought about also by PU(A) 70/2000, that is, in the new First Schedule.

[20] As to when the appellant's replacement identity card was issued, the Director General said in para 11.6 of his affidavit dated 27 January 2005 that it was on 11 March 2000 but the appellant said in para 8.6 of her affidavit dated 7 February 2005 that it was in November 1999. It could not have been 11 March 2000 because on 3 January 2000 the appellant went to the NRD office in Petaling Jaya with an application for the removal of the word 'Islam' and her original name from the replacement identity card No 640108–10–5038. She brought with her the application form for amendment of particulars dated 3 January 2000, which is exhibited. That was her third application. She also brought a statutory declaration dated 3 January 2000, also exhibited, in which she said that she had renounced Islam. She went with her solicitor. The female clerk at the counter refused to accept the form saying that it was incomplete without an order from the Syariah Court that she had renounced Islam. Although the Director General denied the appellant's averments, it was a bare denial. Her evidence is corroborated by the solicitor. I see no reason why she and her solicitor should have lied about the third application. I accept her averments as true. I think the Director General either did not make enquiries as to what happened on 3 January 2000 at the NRD counter in Petaling Jaya or his enquiries came to nothing. He should have said he had no knowledge of the matters averred instead of denying them. I would say the same about his denial of the appellant's averments as to the advice she was given in respect of her second application.

[21] I have quoted sub-reg (2) of reg 14 as that sub-regulation stood at the time of the first application. That was also how it stood at the time of the second and third applications. By an amendment under PU(A) 232/2001 published on 1 August 2001 and deemed to have come into force on 1 November 2000, sub-reg (2) was replaced by the following:

(2) Any person registered under these Regulations who applies to change his name under sub-reg (1) shall submit to the registration officer a statutory declaration which:

(a) certifies the fact that he has absolutely renounced and abandoned the use of his former name and in lieu thereof has assumed a new name; and

(b) contains the reasons of such change of name, other than a conversion of religion.

[22] It is substantially the same as the original sub-reg (2), except for the new words 'other than a conversion of religion,' which relate to the reasons of a change of name. I mention this because the effect of those words was submitted on by Dato' Cyrus Das at certain stages of his oral submission prior to the framing of the administrative law question. What I wish to say is that those new words can have no relevance to this case because they came into force on 1 November 2000 whereas the events of this case ended on 3 January 2000, 10 months before those words came into force.

[23] Just to give an up-to-date picture of the law on the matter, I may mention that by an amendment under PU(A) 232/2001 every applicant for an identity card, including a replacement identity card, must now, whether he is a Muslim or not, state his religion, but the stating of religion in identity cards continues to be for Muslims only.

[24] As the administrative law question that is now to be decided in this appeal was framed, it is the appellant's third application that is the concern of the question, because that was the application to have the word 'Islam' removed from the appellant's identity card. Taking it as a case of incorrect particulars, it would be an application under reg 14 because that regulation also deals with cases of identity cards containing incorrect particulars. The administrative law question cannot be concerned with the second application because the second application was not an application to have the word 'Islam' removed from the appellant's identity card but was an application for change of name from Azlina bte Jailani to Lina Joy, which was approved and effected. Furthermore, in relation to the second application the NRD did not require a certificate or order from the Syariah Court. As has been related, what happened was that the appellant, on the advice or request of the officer of the NRD, substituted her statutory declaration with one in which she did not give change of religion as the reason for the change of name. With that substitution, there was no question of the NRD requiring a certificate or order of the Syariah Court before it could approve the change of name, and it did not in fact require it.

[25] The appellant's misfortune lay in the fact that by the time the NRD approved her application, the retrospective requirement of law that the identity card of a Muslim should state his religion had started to be implemented, so that the religion 'Islam' had to be stated in the appellant's replacement identity card. I bear in mind that the appellant in her application for the

replacement identity card after the approval of her change of name did state her religion as Christianity. Dato' Cyrus Das in his oral submission said that it was unreasonable for the officer concerned to direct, as stated under item 37 of the application form, that the appellant's religion remain as Islam, seeing that the change of name, which was approved, was due to change of religion. But with the substitution of the statutory declaration, the change of name was no longer sought on the basis of change of religion and was not considered and approved on that basis. According to the records of the NRD the appellant was a Muslim. The question of change of religion did not arise for the NRD at that stage. It was therefore not unreasonable for the officer concerned to direct that the appellant's religion remain as Islam. I may mention that in para 13.3 of the appellant's affidavit in support of her originating summons she said that the advice that she should submit another statutory declaration was a trick or tactic (muslihat) and there seems to be a suggestion in para 13.4 that the NRD deliberately delayed approving her application until after the implementation of the new requirement so that when the replacement identity card came to be issued it would, while bearing the new name that the appellant desired, nevertheless show her to be a Muslim, but this allegation of trickery or tactic has not been followed up in the appellant's submission in this appeal. In any case, as I said, since the administrative law question that has been framed for this appeal is concerned with the appellant's third application, and is not concerned with the second application, any criticism of the NRD's manner of handling the second application is irrelevant.

[26] I see from the appellant's written outline of submission that she relies on four points of argument for contending that the NRD had not acted properly in law in rejecting her request for the deletion of the word 'Islam' from her identity card. They are points of law. Occasionally, the submission directs certain of these points of law to the question of change of name, which is a question relevant to the second application. In view of what I have said as to the irrelevancy of the second application to the administrative law question that has been framed, I shall consider these points of law in relation to the third application only.

[27] The appellant's first point of argument amounts to an assertion that reg 14 does not authorise the NRD to require an order of the Syariah Court to support the appellant's application. Related to that is the argument that reg 14 requires only a statutory declaration by the appellant and the NRD was bound to accept the appellant's statutory declaration as establishing that the appellant was no longer a Muslim and was therefore not justified in requiring an order of the Syariah Court. It is argued that since reg 14 requires only a statutory declaration, asking for anything more was imposing an additional requirement and the imposition of an additional requirement that is not provided for by statute is a classic case of reviewable error.

[28] Sub-reg (1) of reg 14, which I have reproduced, deals with both change of name, in para (a), and incorrect particulars, in para (c). The appellant's third application was not about change of name under para (a). The appellant's case in respect of that application could only be one of incorrect particulars falling under para (c). The requirement of statutory declaration in sub-reg (2), which I have reproduced, applies only to cases of change of name under paragraph (a) of sub-reg (1). It does not apply to cases of incorrect particulars under para (c). Therefore in relation to the appellant's third application it is incorrect to argue that reg 14 requires only a statutory declaration and that for that reason the NRD was not entitled to ask for anything more to establish that the appellant was no longer a Muslim. The plain fact is that no requirement as to what is to be furnished in cases of incorrect particulars is to be found in reg 14. But surely it must be a matter of course that to have an incorrect particular changed the person concerned needs to state what the particular is, what the error is, and what the correct particular should be, and to support what he says with proof, and the NRD is entitled to be satisfied, before it approves the change, that there has been an error, and, depending on the importance of the particular concerned, to arrive at its satisfaction either on the mere statement of the person concerned, or only on his statutory declaration, or only upon some independent evidence.

[29] The learned senior federal counsel, Pn Umi Kalthum, however, chose to rely on the reg 4 that was in force at the time of the third application, that is, before it was substituted by the present reg 4 by PU(A) 232/2001. That reg 4 set out the matters and particulars that a person who applied for a replacement identity card under reg 14 was required to do and provide. Paragraph (c) of that reg 4 required the person to give certain particulars to the registration officer, and these were itemised in sub-paras (i) to (x). The particulars under sub-para (x) were 'such documentary evidence as the registration officer may consider necessary to support the accuracy of any particulars submitted'. The response of Dato' Cyrus Das to Pn Umi Kulthum's reliance on sub-para (x) was not to deny that the sub-paragraph would have entitled the registration officer to ask the appellant to produce some evidence that he might consider necessary to prove the appellant's claim that she had renounced Islam, if that claim were the particular in question. His response was made in reference to the second application. The point of his response was that the second application did not contain a particular as to renunciation of Islam, but contained a particular of the appellant's having embraced Christianity. So he argued that by virtue of subparagraph (x) the NRD could have asked for proof of embracement of Christianity but not of renunciation of Islam. But, as I said, the framed question does not concern the second application, for which the NRD did not ask for proof of renunciation of Islam. It concerns the third application.

[30] At this point I have to reveal a difficulty that I encountered about applying sub-para (x) to the third application. Was the third application an application

for a replacement identity card, so that reg 4, and the sub-para (x) which belonged to it, would apply to the third application? This is a question as to a matter of detail which has not been addressed by either party in submission. Pn Umi Kalthum presumably assumed that the third application was one for a replacement identity card. Dato' Cyrus Das might have so assumed too or might not have noticed this problem of detail if his mind was dwelling on the second application, as apparently it was. The difficulty is this. In the case of an incorrect particular, as well as in that of change of name, sub-reg (1) of reg 14 requires two things, a report of the fact of incorrect particular followed by an application for a replacement identity card. As has been seen, for the second application, which was about change of name, the appellant did first submit a report form, on which approval of the change of name was given. After that she submitted an application for a replacement identity card. As I have already observed, sub-reg (2), which concerns change of name, apparently treats the two stages in sub-reg (1), namely the report of fact and the application for a replacement identity card, as one process of applying for change of name. Itwould seem that it is the report stage that is important, in that it is the stage at which the change or correction is approved, and that the application for a replacement identity card is merely a mechanical stage for implementing the change or correction, the present identity card having to be replaced probably because it is not possible or advisable to effect on the present identity card the amendment of a particular. Now the form that the appellant used in respect of her third application, Form JPN 5/2, is entitled 'Borang Permohonan Untuk Membetulkan Maklumat Dalam Sijil', which may be rendered in English 'Application Form for Correction of Particulars in a Certificate'. Item 1 of the form indicates that it is a composite form to be used in respect of six types of certificates issued by the NRD, including the identity card. It neither professes to be a report form nor an application for a replacement identity card. So on the face of it, it does not appear to fit into sub-reg (1) of reg 14 or into reg 4. That is a danger of using a composite form to cater for matters under different statutes. It becomes impossible to give a title to the form that makes it apparent, in respect of a particular matter, that it relates to a particular provision of a particular statute. On the other hand, it has to be accepted that it is a form to be used in cases of incorrect particulars under para (c) of sub-reg (1) of reg 14. I overcome the difficulty by assuming that it is a form for reporting the fact of an incorrect particular under sub-reg (1) of s 14. I assume that if on that form the correction is approved, there will have to be a separate application for a replacement identity card. The form that the appellant used not then being a form for an application for a replacement identity card, could the then reg 4, which applied to an application for a replacement identity card, and its para (x), be applied to that form? My opinion is that since, as I have surmised, a change in name or a correction of a particular is effected by the issuance of a replacement identity card, and since that in turn depends on the important stage of approving the change or correction after considering the report form,

the report has to be considered as a necessary and inseparable part of the process of applying for a replacement identity card to effect the change or correction, and para (x) could be used at the report stage to call for the production of documentary evidence of any particular in the report. In fact, in a case of change of name or incorrect particular, para (x) could only be of use at the report stage because at the stage of actual application for the replacement identity card everything would have already been cleared at the report stage and there could not arise any need to call for anything more.

[31] In the appellant's third application in Form JPN 5/2, under items 29, 30 and 31 she in effect stated that the error in her identity card was in the statement of her religion as 'Islam', which therefore she wanted removed. Itamounted to her saying that she had renounced Islam. The NRD could therefore, under para (x), require her to produce documentary evidence to support the accuracy of her contention that she was no longer a Muslim.

[32] Although, as I have shown, reg 14 did not require a statutory declaration from her, she did, together with the form, submit a statutory declaration to the effect that she was no longer a Muslim. Although I have rejected her argument which proceeded on the misconception that reg 14 required a statutory declaration and nothing more from her, that is the additional requirement argument, I am still faced with the question whether, she having chosen to declare by statutory declaration that she had renounced Islam, it was reasonable on the part of the NRD to refuse to accept her declaration as establishing that she was not a Muslim and to require further proof of it in the form of an order or certificate by the Syariah Court. The form of proof that the NRD required indicates that, besides not being prepared to accept the appellant's word for it, even though given in a statutory declaration, it was not prepared to itself determine that the appellant had renounced Islam but required the determination of some other authority.

[33] Renunciation of Islam is generally regarded by the Muslim community as a very grave matter. This is reflected in the very things reported in the newspapers that constituted one of the reasons that the appellant said it was necessary that her right to renounce Islam, and her position as no longer a Muslim, be recognised. The Muslim community regards it as a grave matter not only for the person concerned, in terms of the afterlife, but also for Muslims generally, as they regard it to be their responsibility to save another Muslim from the damnation of apostasy. The incidence of apostasy is therefore a highly sensitive matter among Muslims. Apart from the spiritual aspect, Muslims in this country, where Islam is the official religion, are subject to special laws that no other community is subject to. In particular there are statutory offences that are committable by Muslims as Muslims that are not committable by others.

[34] Against that background must be mentioned the fact that whether a person has renounced Islam is a question of Islamic law that is not within the

jurisdiction of the NRD and that the NRD is not equipped or qualified to decide. What the Islamic law on the matter is has not been ventilated in this appeal. One might be tempted to think that the fact that a person affirms in a statutory declaration that he is no longer a Muslim or the fact that he has been participating in a Christian form of worship, or the fact that he has been baptised is sufficient, according to Islamic law, to warrant others to treat him as having apostatized and as being no longer a Muslim. But is that so in Islamic law? The NRD would be right in taking the stand that it is not for it to decide. It may be that according to Islamic law no Muslim may be treated as having apostatized, no matter what he may have done or failed to do, unless and until he has been declared an apostate by some proper authority. If the NRD were to accept that a person has apostatized merely on his declaration, and on that basis officially stamp him a non-Muslim by deleting the word 'Islam' from his identity card, it runs the risk of mistakenly stamping a person a non-Muslim who according to Islamic law has not apostatized. It will also be making it easy for persons who are born and bred as Muslims but who are indifferent to the religion to get classified as non-Muslims simply to avoid being punished for committing the offences that I have mentioned. It will consequently be inviting the censure of the Muslim community. It is for these reasons that I believe that the NRD adopts the policy that a mere statutory declaration is insufficient for it to remove the word 'Islam' from the identity card of a Muslim. It is because renunciation of Islam is a matter of Islamic law on which the NRD is not an authority that it adopts the policy of requiring the determination of some Islamic religious authority before it can act to remove the word 'Islam' from a Muslim's identity card. The policy of the NRD is stated in para 14 of the Director General's affidavit dated 27 January 2005. In view of the considerations that I have set out I am of the view that the policy is a perfectly reasonable one.

[35] In connection with her first point of argument, the appellant refers to the unreported decision in *Ismail bin Suppiah v Ketua Pengarah Pendaftaran Negara* (R–1–24–31 of 1995). That was a case in which the plaintiff, who was born a Muslim, applied to have his Muslim name in his identity card changed to a Hindu name on the ground, which he stated in a statutory declaration in support of the application, that he thereby renounced Islam and embraced Hinduism. The NRD insisted that he obtain the approval of the Johore Islamic Religious Department or the Johore Chief Kadi for him to renounce Islam and in fact, even after his solicitors had reported the fact of his renunciation of Islam to the Johore Chief Kadi, did not approve his application but referred it to the Johore Islamic Religious Department for action. In 1995 he applied to the High Court in Kuala Lumpur for, and obtained on 20 September 1995, a declaration that the approval of the Johore Islamic Religious Department for him to renounce Islam was not necessary and that any reference by the NRD to that Department for approval to process his application for change of name was *ultra vires* reg 14 of the 1990 regulations, subs-s (2) of s 141 of the

Administration of Islamic Law Enactment 1978 of the State of Johore and cl (1) of art 11 of the Federal Constitution. He also sought and obtained an order that the NRD issue a temporary identity card in his new name.

[36] Section 141 of the Johore Enactment that was mentioned in the declaration in that case states as follows:

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(1) Whoever converts any person into the Islamic Religion shall forthwith report the matter to the Kadi by giving all necessary particulars for registration.

(2) Whoever is aware of a Muslim person has converted out of the Islamic Religion shall forthwith report the matter to the Kadi by giving all necessary particulars and the Kadi shall announce that such person has been converted out of the Islamic Religion and shall register accordingly.

[37] That the NRD chose to involve the Islamic religious authorities of Johore and not of any other State was because it regarded the plaintiff, being resident in Johore, as subject to the Islamic law as administered in Johore. This is apparent from para 5 of the NRD's affidavit in that case dated 28 July 1995.

[38] The appellant's point in referring to the decision in that case is to argue that since, as far as she is aware, the NRD did not appeal against the decision, it was not open for it to take in her case a contrary stand on reg 14 in defiance of the decision. It must again be stressed that that case was a case of an application for a change of name in an identity card whereas the appellant's case is one of removal of the word 'Islam' from her identity card. Nevertheless, if the decision in that case was the result of a ruling that the NRD was bound in any case to accept a person's mere declaration of renunciation of Islam in a statutory declaration as establishing that the person has renounced Islam, the appellant would be justified in raising the decision in that case against the NRD in the present case and in arguing that therefore it was not open for the NRD to require anything more from her for removing the word 'Islam' from her identity card than her statutory declaration to establish that she had renounced Islam. But the reasons for the decision in that case are not known because apparently there are no grounds for the decision. One or two conjectures may be made as to the grounds and these would militate against the appellant's reliance on that decision. These conjectures stem from a consideration that the learned judge viewed the case as having to be decided in the context of the law of Johore. He might have considered that the NRD was wrong to require the consent of the Johore Islamic Religious Department for the plaintiff to renounce Islam, and later to refer the matter to that Department, whereas under the Johore Enactment the proper authority was the Kadi under sub-s (2) of s 141. Or the learned judge might have considered that the NRD had misunderstood s 141 because in para 10 of the NRD's affidavit dated 28 July 1995, in response to the plaintiff's averment that his renunciation of Islam had been reported to the Chief Kadi pursuant to sub-s (2), the NRD's officer

seems to say that sub-s (2) applies only to a person who has previously embraced Islam under sub-s (1), whereas sub-s (2) is independent of sub-s (1). Or, and this is most important, the learned judge might have considered, from the clear wording of sub-s (2), that in Johore even the Kadi did not have the right to give or withhold consent to renunciation of Islam. It was left entirely to the person concerned. The Kadi's function was only to announce the fact of renunciation and register it. It was only a mechanical function. From that, the learned judge might have considered that in Johore a Muslim was free to renounce Islam, and to do so merely by saying so, that no approval or ascertainment by any religious authority was necessary, and that therefore the NRD should have accepted the plaintiff's statutory declaration whereby he renounced Islam as establishing that he was no longer a Muslim and should have approved his application for change of name. We do not know the real reason why the NRD did not appeal against the decision, because the appellant's reliance on the case is not by affidavit, but only in submission, and therefore the NRD has had no occasion to explain why it did not appeal. If the NRD considered that those were the reasons for the judge's decision, it might have accepted that the judge was right and that there would be no point in appealing. But such acceptance would only be of the correctness of the decision in the context of the Islamic law as administered under statute in Johore. It would not be an acceptance of the decision for application in this case because the NRD would have had no reason to consider the appellant's application in the context of the Islamic statute law in Johore since the appellant was not resident in Johore. The Islamic statute law to which attention has been focused in this case is the Administration of Islamic law (Federal Territories) Act 1993, which does not contain any provision concerning apostasy.

[39] The appellant's second point of argument is that it was the decision of the Federal Court in *Soon Singh a/l Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah* [1999] 1 MLJ 489 'that devised this procedure', which I take to mean the procedure adopted by the NRD of requiring the word of the Syariah Court before it can accept that a Muslim has renounced Islam, but the decision of the Federal Court, which was that it is the Syariah Court and not the High Court that has the jurisdiction to make declarations of apostasy of Muslims, was 'fundamentally flawed if not given per incuriam' for various reasons which I need not go into because the question of the correctness of the Soon Singh decision is no longer pertinent, now that the appeal has been reduced from one relating to high constitutional questions to one concerning the validity of the NRD's decision in administrative law. The decision in Soon Singh was and remains authoritative, and in administrative law, in view of that decision, the NRD acted correctly in naming the Syariah Court as the authority on whose word it would accept that the appellant was no longer a Muslim.

[40] Connected with the second point of argument, the appellant argues that it was a case of *Wednesbury* unreasonableness on the part of NRD to impose

the requirement of an apostasy order of the Syariah Court, because it was impossible to obtain such an order as there is no provision for apostasy in the Administration of Islamic Law (Federal Territories) Act 1993 and also because, according to the Bar Council, 'There are … no known cases where a syariah court has allowed an application for declarations of apostasy, the conventional thinking on the subject characterising the act of apostasy as a sin in Islam', the implication being that no Syariah Court would be willing to make a declaration of apostasy. As to absence of provisions relating to apostasy in the 1993 Act, I am reluctant to conclude that the Syariah Court would consider it as a bar to making a declaration of apostasy if it accepts, whether on its own or in agreement with the decision in *Soon Singh*, that it nevertheless has jurisdiction to make declarations of apostasy. As to unwillingness to make a declaration of apostasy, the appellant has not sought a declaration of apostasy from the Syariah Court, and I am reluctant to assume, on the knowledge of the Bar Council, that the appellant would be bound to fail in any attempt to obtain a declaration of apostasy from the Syariah Court.

[41] But what is more important is that the reasonableness of the NRD's decision must be seen more in its unwillingness to accept that the appellant had renounced Islam solely on the basis of her word in her statutory declaration than in its specifying of the authority on whose word it would be willing to act. That it specified the Syariah Court was because to its understanding it was the Islamic religious authority that could confirm that a Muslim is an apostate. From the affidavit of the Director General it is clear that so long as the confirmation came from some authority, that would be sufficient for the NRD. If, say, the law was that it was the High Court that was the competent authority, I have no doubt that the confirmation order by the High Court would be acceptable to the NRD. All that it wanted was a proper confirmation by someone who had the authority to give it, reliance on which could free it from error or public blame in such an important and sensitive matter. It was unwilling otherwise to accept that the appellant was no longer a Muslim. As I have said, and for the reasons that I have given, its unwillingness was reasonable. The question of apostasy of a Muslim, as I have said, is a question of Islamic law. The Islamic law on the question has not been examined in this appeal. For this court to hold that the unwillingness of the NRD was unreasonable would amount to holding, and to requiring the NRD to accept, that in Islamic law a Muslim may be treated by the world at large as having renounced Islam and as no longer a Muslim when he says that he has renounced Islam. That is something that to my mind we cannot do in this appeal. The unwillingness of the NRD does not become unreasonable or any less reasonable if a system that is not within its control makes it difficult for the appellant to obtain the confirmation that it needs.

[42] The appellant's third point of argument is that it was irrational of the NRD to have allowed the change of name but to refuse to delete the word

'Islam' because the NRD knew that the change of religion was the reason for the change of name. Change of name and change of religion, it is argued, are inextricably intertwined, and it is therefore an act 'in defiance of logic' to act half way by allowing one but not the other. Cited in support of the argument is the following statement on 'irrationality' by Lord Diplock in *Council of Civil Service Unions & Ors v Minister for the Civil Service* [1984] 3 All ER 935 at p 951 a–b:

> It applies to a decision which is so outrageous in 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.

[43] The appellant's argument overlooks the fact, as has been seen, that the change of name that the NRD approved on the appellant's second application was not approved on the basis of an acceptance that the appellant had renounced Islam. There was therefore no absence of logic when, on the third application, the NRD required confirmation that the appellant had apostatized. The NRD acted perfectly, prudently and rationally in a matter of such sensitivity and importance.

[44] The appellant's fourth point of argument is that cl (1) of art 11 of the Federal Constitution guarantees freedom of choice of religion and therefore no third party — meaning the Syariah Court or any other religious authority — could adjudicate or decide on her decision to renounce Islam and embrace Christianity. But I need not deal with this point because even the appellant herself says: 'In view of the limited question framed by the court, it might not be necessary to go into these far reaching questions as direct issues for answer …'.

[45] As in my judgment the appellant does not succeed on any of her points of argument, her appeal fails and must be dismissed. My decision, and the reasons that I have given, must not be taken as in any way a reflection of my attitude, as a judge or an individual, towards her desire that she be no longer regarded as a Muslim. My decision is simply to say that the NRD was not wrong in administrative law in rejecting her application for the deletion of the word 'Islam' from her identity card on the ground that her renunciation of Islam was not confirmed by the Syariah Court or any other Islamic religious authority.

[46] As for costs, since the involvement of the first respondent, the Majlis, was necessary in the appeal as it originally stood, and they have not been involved in the appeal as it has come to be taken on the administrative law question, I would not order costs for them. As for the Government and the Director General, the second and third respondents, I think that they should bear their own costs considering that what the appellant seeks ultimately is merely recognition of a status that is very private and personal but very important to her, to which she believes, I have no doubt sincerely, she has a right. So I would make no order as to costs.

Arifin Zakaria JCA (concurring):

[47] I have read the judgments of Gopal Sri Ram JCA and Abdul Aziz bin Mohammad JCA in draft, and I agree with Abdul Aziz bin Mohamad JCA that this appeal be dismissed with no order as to costs.

Gopal Sri Ram JCA (delivering dissenting judgment):

[48] This case first came before us as a fully blown constitutional appeal. The gist of the appellant's complaint was that her constitutionally guaranteed right to freedom of religion had been infringed by the Government. However, on closer scrutiny, there appeared to be a much narrower issue of administrative law of immediate importance that was at stake. It is whether the National Registration Department ('the NRD') had acted in accordance with law when it rejected the appellant's request to remove the word 'Islam' from her National Registration Identity Card ('NRIC'). We therefore had to address this directly relevant issue and not the wider irrelevant one. We had also to give certain directions for that purpose. I will explain what we did. But first, it is necessary to set out in brief the factual matrix against which this appeal rests.

[49] The appellant was born a Muslim. On 11 May 1998, she was baptised a Christian. Her given name was Azalina bte Jailani. She wanted to change it at first to Lina Lelani and later to Lina Joy. That, of course, required the change of her name as it appeared in her NRIC. She therefore applied to the NRD to have that done. What actually transpired between her and the NRD in terms of chronology is set out in her affidavit dated 7 February 2005 and I find it unnecessary to go any further than to quote from the following portions that I have extracted from it:

> 7.1.1(a) — On 21 February 1997, I applied to the NRD for a change of name in my identity card from 'Azlina bte Jailani' to 'Lina Lelani' on the ground that I no longer profess Islam and have since embraced Christianity ('the First Application'). The First Application was not approved by the Third Respondent.
>
> 7.1.2 — In an application dated 15 March 1999, I again applied to the NRD for a change of name in my identity card from 'Azlina bte Jailani' to 'Lina Joy' (the Second Application'). In support of the Second Application, I swore a statutory declaration on 15 March 1999 wherein I reiterated that I renounced the religion of Islam and have accepted the Christian faith.
>
> 7.1.3 — There was no response from the NRD is respect of the Second Application. On or around July 1999, I attended at the NRD at its branch in Petaling Jaya to inquire about the delay in the matter.
>
> 7.1.4 — The attending officer of the NRD, whose name I cannot recollect, advised me that since my application only relates to a change of name, I was requested by him, to avoid difficulty, not to mention in my statutory declaration the reason for the change of name being conversion of religion. He also requested me to resubmit the application form dated 15 March 1999 with a fresh statutory declaration. The

aforesaid officer of the NRD informed me that if I did so, there would not be any difficulty in processing my application for a change of name in my identity card.

7.1.5 — Pursuant the aforesaid advice of the said officer, I accordingly swore a further statutory declaration on 2 August 1999 without any mention whatsoever of the reason of conversion of religion (the 'new statutory declaration').

7.1.6 — I did so because under the Regulations as it was in force at that time, there was no requirement to mention a person's religion in the identity card including that of Muslims.

7.1.7 — I did not know that by this time, the Regulations will undergo a change and that there will be a requirement for an entry of religion in the identity card for persons of the Muslim faith.

7.1.8 — I am advised by my solicitors whose advice I believe to be true, that prior to 1.10.1999, there was no provision in the Regulations requiring the word 'Islam' to be stated on the identity card.

7.1.9 — On 2 August 1999, 1 resubmitted to the NRD, the application form dated 15 March 1999 together with the new statutory declaration.

8.1 — By a letter dated 22 October 1999 I was informed by the NRD that my application for change of name has been approved. By the said letter I was required to apply for a identity card with the approved new name.

8.2 — As requested by the NRD, I had on 25 October 1999, completed a form of application for an identity card to be issued to me. In the said form I stated that inter alia the name to be stated in my identity card is 'Lina Joy' and particular of religion 'Kristian'.

8.3 — I am advised by my solicitors whose advice I verify believe to be true that an amendment was made to the Regulations by the insertion of regulation 4(c) (iva). [This is an error, later corrected to regulation 5(2)]. This amendment was brought into effect by PU(A) 70/2000 which came into force on 1.10.1999.

8.4 — Regulation 4(c)(iva) provides that in the case of a Muslim, the particular 'Muslim' is to be stated in the identity card.

8.5 — It would appear that the Second Application dated 15 March 1999 and submitted on 2 August 1999 was only processed by the Third Respondent on 25October 1999.

8.6 — On or around November 1999, I was issued with a new identity card ('thenew identity card') a copy of which is found at p 207 of the Appeal Record. Itwill be seen that contrary to my stipulation in my application form dated 25October 1999 that my religion is 'Kristian', the NRD had nevertheless inserted the word 'Islam' at the front of my identity card and my former name at the back of the identity card.

…

10.0 — Shortly after receipt of the new identity card, I applied to the NRD to have the word 'Islam' deleted from it. The application form dated 3 January 2000 (the 'Third Application') and the supporting statutory declaration dated 3 January 2000 are found at pp 203 and 188 of the Appeal Record respectively.

10.1 — I attended the NRD at its Petaling Jay a branch on 3 January 2000 with my solicitor Kevin Chung Li Kien. I reiterate that the staff of the NRD, a female clerk, refused to accept my aforesaid application form which was submitted by me over the counter and gave the reason that the application is incomplete in that I was required to obtain an order from the Syariah Court.

10.2 — There was no reason for me not to have submitted to the NRD the aforesaid application form and the Statutory Declaration both dated 3 January 2000 which were already completed and prepared. Furthermore, I strongly desired to have the word 'Islam' deleted from my identity card to avoid being considered and treated as a Muslim when I am no longer one.

[50] As appears from her affidavit, the appellant was obviously dissatisfied with the position she found herself in. She took out an originating summons in which she claimed several interlocking declarations all based on the premise that her fundamental right to religious freedom enshrined in art 11(1) of the Federal Constitution had been infringed. The learned judge who heard the matter dismissed the summons for reasons that have since become academic.

[51] After hearing the initial argument of learned counsel for the appellant it became patently clear that justice will best be achieved if this matter was treated as a complaint in the administrative law environment. With the consent of the parties, my learned brothers and I therefore formulated the following question which we considered to be the only issue which we have to decide in this appeal: Whether the NRD was right in law in rejecting the appellant's application under reg 14 of the National Registration Regulations 1990 ('the1990 Regulations') to have the statement of her religion as 'Islam' deleted from her NRIC and in requiring a certificate and/or order from the Syariah Court. With the parties consent we then gave the following directions for the further conduct of this appeal: (i) that the Director General of the National Registration Department ('the Director General') be added as a respondent to these proceedings; (ii) that the originating summons be amended accordingly; (iii) that service of the amended cause papers be dispensed with; (iv) that the parties be at liberty to exchange affidavits only upon the issue as framed. Ourdirections were complied with and this appeal came on for further hearing on 7 March 2005. At the conclusion of arguments we reserved judgment. I now produce the reasons for the decision I have reached in this case.

[52] In the course of argument our attention was drawn to following provisions of the 1990 Regulations which are of immediate relevance to this case. First, reg 4. This regulation requires a person who applies for a replacement identity card under reg 13 (irrelevant for present purposes) or reg 14 to take certain steps and to give certain particulars to the registration officer. Paragraph (cc) of reg 4

sets out the particulars that are required to be given. And sub-para (xiii) of para (cc) goes on to say this:

> any other documentary evidence as the registration officer may consider necessary to support the accuracy of *any particulars submitted*. (Emphasis added.)

[53] Next there is reg 14. This was amended in 2001. Before its amendment, that is to say, at all times material to the present case, the relevant parts of sub-regs (1) and (2) of that Regulation read as follows:

> (1) A person registered under these Regulations who:
>
> (a) changes his name;
>
> (b) …; and
>
> (c) ….
>
> shall forthwith report the fact to the nearest registration office and apply for a replacement identity card with the correct particulars.
>
> (2) Any person registered under these Regulations who applies for a change of name under sub-reg (1) shall: furnish the registration officer with a statutory declaration to the effect that he has absolutely renounced and abandoned the use of his former name and in lieu thereof has assumed a new name and *the reason for such change of name shall also be stated in the statutory declaration*. (Emphasis added).

[54] It is common ground between the appellant and the Director General that the issue whether the latter acted in accordance with law turns upon the proper construction to be placed on the foregoing two Regulations. I agree that this is the correct approach to be adopted based on the facts of this case. So, this is yet another case which, to borrow the phraseology of Professor Taggart of the University of Auckland, has to be 'thrown into the thicket or the bramble bush of statutory interpretation'. Whatever the expression used to describe the process, it is ultimately for the courts to grasp the nettle and to try and produce a just result according to law by interpreting the words used by the legislature or the subsidiary lawmaker.

[55] I readily accept that there are no fixed rules for the interpretation of written law although the interpretive jurisdiction is that what is most exercised by the courts. That is why learned academics such as Professor Taggart find this area of the law to be a thicket. But I must say in defence that there are guidelines for statutory construction. And some of these guidelines have, over a period of time, acquired the force of principle. Some of them are quite easily identified. For example, it is a principle of statutory interpretation that Parliament is presumed not to legislate or empower the making of subordinate legislation that is not harmonious with the Constitution. This is also known as the presumption of constitutionality. See *Jilubhai Nanbhai Khachar v State of Gujarat* AIR 1995 SC 142. Another is the principle that Parliament is presumed not to intend an unfair or an unjust result. See *Marathei v JG Containers (JV) Sdn Bhd* [2003] 2 MLJ 337 and the cases cited therein.

[56] Now, I am entirely conscious that the written law that we have to interpret here is not an Act of Parliament but a piece of subsidiary legislation. But that does not mean that I am entitled to regard it as an inferior form of legislation. According to one of the leading texts on the subject, '*Statutory Interpretation in Australia*'. (5th Ed) by Pearce & Geddes, para 1.2, broadly the same approach is to be adopted to the interpretation of both Acts of Parliament and to delegated legislation. In my judgment that is an entirely accurate view. It is with these matters in mind that I now turn to deal with the arguments of counsel, in particular as to the meaning to be given to regs 4 and 14 when they are read together.

[57] The case for the Director General was admirably summed up by the learned senior federal counsel. She accepts that the 1990 Regulations in their unamended form do not require the appellant's religion to be printed on the NRIC. However, she adds, relying on para (cc) (xiii) of reg 4, that the Director General is entitled to call for additional information from a person applying for a change of name under reg 14. Therefore, there was nothing illegal in the Director General requesting the appellant to produce a certificate and/or order from the Syariah Court. On the other side, learned counsel for the appellant submitted that reg 4 (cc) (xiii) only permits the Director General to request for information in respect of the particulars furnished by the appellant. So, in the present instance the Director General would have been entitled to ask the appellant to produce her baptismal certificate to show that she was in fact a Christian as stated in her application form. Accordingly, the request for the order from the Syariah Court was not a request authorised by reg 4 (cc) (xiii).

[58] There is no necessity for much intellectual exercise to decide which of these two opposing arguments is correct. All I have to do is to look at the wording of reg 4(cc) (xiii) and see what it says. And it says that a request can be made 'for any other documentary evidence as the registration officer may consider necessary to support the accuracy of any particulars submitted'. There can be no quarrel, I think, that the words 'particulars submitted' refer to the particulars contained in the application already submitted by the appellant to the NRD. In her statutory declaration dated 21 February 1997 stated, among other matters: (i) that she had never professed or practised Islam as her religion since birth; (ii) that she had embraced Christianity in 1990; and (iii) that she intended to marry a Christian. Her later statutory declaration dated 15 March 1999 affirmed in support of her application dated 3 January 2000 adds little to what she had previously declared. The form she attempted to submit on 3 January 2000 makes it clear in column 31 that she no longer wished to be a Muslim. In these circumstances, an order from the Syariah Court does nothing to support the accuracy of the particular that the appellant is a Christian. However the baptismal certificate dated 11 May 1998 produced by the appellant in evidence amply supports the accuracy of the particular that the appellant is a Christian. This conclusion is amply supported by examining the way in which reg 14(2) is constructed. That sub-reg requires an applicant to state in his or

her statutory declaration the reason for the change of name. In the appellant's case, she stated that her reason for the change of name was that she was now a Christian. Accordingly, there is nothing in reg 4 (cc) (xiii) that supports the action of the Director General in this case.

[59] It follows from what I have said thus far that an order or certificate from the Syariah Court is not a relevant document for the processing of the appellant's application. It is not a document prescribed by the 1990 Regulations. Nor is it a particular that a registration officer is entitled to call for as a particular under reg 4 (cc) (xiii). I note that in the unreported case of *Ismail bin Suppiah v Ketua Pengarah Pendaftaran Negara* (R–1–24–31 of 1995) Ahmad Fairuz J (now Chief Justice) after hearing argument of counsel granted an order the effect of which in substance was: (i) to declare that it was not necessary for the plaintiff in that case to obtain the consent of the Religious Department of Johor to convert out of Islam; and (ii) to strike down as ultra vires reg 14 of the 1990 Regulations, the Director General's action in requiring the plaintiff to obtain the consent of the Religious Department of Johor for the purpose of processing his application to effect a change of his name. Of particular importance is the fact that that case was decided before the 1990 Regulations were amended in 1999.

[60] Accordingly, it is my considered judgment, that by requiring the production of the said order/certificate, the Director General took into account an irrelevant consideration when deciding not to effect the amendment to the appellant's NRIC. That, of course, vitiates the decision not to delete the word 'Islam' from the appellant's NRIC. As far as authority for this conclusion is concerned you have to go no further than *Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1948] 1 KB 223 where Lord Greene said:

> It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'.

[61] In a case decided several years before *Wednesbury* the High Court of Australia in the joint judgment of Rich, Starke, Dixon, Evatt and McTiernan JJ in *R v The War Pensions Entitlement Appeal Tribunal; ex p Bott* (1933) 50 CLR 228 expressed the same principle in slightly different words:

> It may be shown that the members of the tribunal have not applied themselves to the question which the law prescribes, or that in purporting to decide it they have in truth been actuated by extraneous considerations, or that in some other respect they have so proceeded that the determination is nugatory and void.

[62] In *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147, Lord Reid re-stated the law in language that has been oft quoted by courts throughout the Commonwealth:

> (T)here are many cases where, although the tribunal had jurisdiction to enter on the inquiry, it has done or failed to do something in the course of the inquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the inquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive. But if it decides a question remitted to it for decision without committing any of these errors it is as much entitled to decide that question wrongly as it is to decide it rightly.

[63] Mark you that some 19 years before *Anisminic*, Kania CJ propounded the same principle in the *Bharat Bank Ltd Delhi v The Employees of the Bharat Bank Ltd Delhi* AIR 1950 SC 188:

> Where the discretion is committed to any body or a tribunal exercising quasi-judicial functions which are not fettered by ordinary rule of law, the tribunal should in the absence of any provision to the contrary be deemed to have the final authority in the exercise of that discretion. We cannot sit in appeal over their decision and substitute our own discretion for theirs. Questions, however, may and do arise where such quasi-judicial body, attempts to usurp jurisdiction which it does not. *It may assume jurisdiction under a mistaken view of law or refuse to exercise jurisdiction properly by adoption of extraneous or irrelevant considerations: or there may be cases where in its proceedings the tribunal violates the principles of natural justice*. In all such cases the most proper and adequate remedy would be by writ of certiorari or prohibition and the court having authority may direct that the decision of the body or tribunal might be brought up to be quashed for lack of jurisdiction or for mistakes apparent on the face of it. (Emphasis added.)

[64] The principle that is to be distilled from these cases is that where a public decision-maker takes extraneous matters into account his or her decision is null and void and of no effect. So here, the Director General's decision in refusing to effect the amendment to the appellant's NRIC without an order/certificate of the Syariah Court is null and void and of no effect.

[65] There is a further point to be made in the appellant's favour. It is to be found in para 7.18 of the appellant's affidavit. The point was conceded on behalf of the Director General. Before 1 October 1999 there was no provision in the 1990 Regulations that mandated the statement of a person's religion in his or her NRIC. So, if the Director General (acting of course through his subordinate, the registration officer) had approved the appellant's application as he was bound by law to do the present problem would never have arisen.

[66] To sum up, this is a simple and straightforward case calling for the application of well settled principles of administrative law. It is a case where a public decision-maker misconstrued the relevant law and took into account extraneous considerations. The appellant is entitled to have an NRIC in which the word 'Islam' does not appear. I would accordingly grant her a declaration in those terms and direct the Director General to forthwith comply with the terms of the said declaration.

[67] A word about costs. This is a case which, if it had been presented in simple terms would have caused no difficulty to anyone. Least of all to the appellant. Unfortunately, she pursued a rather convoluted course as a result of which sight was lost of the core issue. In the circumstances of this case, although the appellant has succeeded, I would make no order for costs here and in the court below in respect of all parties before us.

[68] So far as the Majlis Agama Islam, Wilayah Perseketuan (the Islamic Religious Council of the Federal Territory) is concerned, in my view it was wrongly joined as a party and should be struck out as should the Government of Malaysia. Neither of these were necessary parties to the originating proceeding in the court below.

Appeal dismissed.

Reported by Loo Lai Mee