

## PRESS SUMMARY

### COURT OF APPEAL OF MALAYSIA

**Ketua Pegawai Penguatkuasa Agama & 4 Ors v Maqsood Ahmad &**

**38 Ors**

**(Civil Appeal No: B-01(A)-468-07/2018 & B-01(A)-513-08/2018)**

*On Appeal from Judicial Review No.: 25-56-10/2015*

**Justices:** Badariah Sahamid (JCA), Zabariah Mohd. Yusof JCA (Now FCJ), Nor Bee Ariffin (JCA).

#### **Decision (unanimous)**

**[1]** There are before us two related appeals arising from the same decision of the High Court at Shah Alam. Appeal number B-01(A)-468-07/2018 (**'Appeal 468'**) is an appeal by the Selangor State Government and religious authorities against the decision in a judicial review application in which the High Court had allowed the Applicants various reliefs against the Respondents.

**[2]** Appeal number B-01(A)-513-08/2018 (**'Appeal 513'**) is a cross-appeal by the Respondents, who disagree with the High Court's decision that it is the Syariah Courts and not the Magistrate's Courts who have jurisdiction to try offences under section 97(2) of the **Administration of the Religion**

**of Islam (State of Selangor) Enactment 2003 ('ARIE 2003')**. Parties will be referred to in accordance with their respective positions in **Appeal 468**.

### **The Core Issue: Who is a Person 'Professing the Religion of Islam'?**

**[3]** The core issue for consideration in these appeals is essentially this: who is a person 'professing the religion of Islam'? We do not propose to view the matter from a spiritual perspective. Our focus, we must emphasise at the outset, is to determine who is a person 'professing the religion of Islam' in accordance with the Federal Constitution, relevant State Enactments and judicial precedent.

### **Religious Identity**

**[4]** The second issue is the issue of evidence of religious identity, and in particular, in respect of the Malaysian Respondents, the conclusiveness of the religious identity stated in their respective Identification Cards (MyKad) as evidence of a person 'professing the religion of Islam'. We note that this issue was not raised at the High Court. However, the issue was canvassed by learned counsels before us. We are of the view that this is a pertinent issue in the context of the jurisdiction and powers of the Appellants to investigate Syariah offences under the ARIE 2003.

## **Background Facts**

[5] The 39 Respondents claim to be members of the Ahmadiyya Muslim Jama'at religious group ('**Ahmadiyya**'). The Respondents had relocated their new base from Kampung Baru to Kampung Nakhoda, Batu Caves. The Respondents subsequently moved to No 16-2 Dolomite Park Avenue, Jalan Batu Caves, Selangor ("the Premises"), where they have been carrying out their religious practices, including prayers within the compound of their base which goes by the name of '*Bait-us-Salam*'.

[6] On 11.4.2014 at around 2.00pm, officers of the 3<sup>rd</sup> Appellant, Jabatan Agama Islam Selangor ('**JAIS**'), raided the Premises on the grounds that the Respondents were using those premises to perform their prayers in contravention of section 97 of ARIE 2003 which provides that Muslims are prohibited, without prior written approval, from erecting buildings with the aim of using them or causing them to be used for religious activities. A contravention of the above provision attracts penal sanctions.

[7] Upon the raid, Respondents were informed that they had not obtained written permission to use the Premises for purposes which may only be carried on, in or by a mosque, and thus were in violation of section 97 of the ARIE 2003. All 39 Respondents (36 of whom are adults and the other

3, minors) were present at the Premises and were arrested, detained and informed of the possibility of prosecution in the Syariah Court. The 1<sup>st</sup> Appellant issued the Respondents with Letters of Agreement and Bond ('**Bond**') compelling them to appear before the Syariah court to answer to the charges against them.

**Note:** Not every Respondent is a Malaysian citizen. Some of them are overseas nationals living in Malaysia as UNHCR refugees.

[8] On 10.7.2014, The Respondents filed an application for judicial review before the High Court of Malaya at Kuala Lumpur in respect of the issuance of the Letters of Agreement and Bond to each of them. Subsequently, leave to apply for judicial review was granted by the High Court at Kuala Lumpur and the proceedings were transferred to the High Court of Malaya at Shah Alam.

### **Proceedings before the High Court**

[9] The two questions framed for determination in the application for judicial review before the High Court are essentially as follows:

#### **“Question 1**

*Whether the Syariah courts in the State of Selangor do not have jurisdiction in respect of the offence in section 97(2) of the Administration of the Religion of Islam (State of Selangor) Enactment 2003.*

## **Question 2**

*If the above question is answered in the negative: in light of the gazetted 1998 and 2000 'Fatwas Tentang Ajaran Ahmadiyah/Qadiani', whether the Syariah courts in the State of Selangor do not have jurisdiction over the members of the Ahmadiyya Muslim Jama'at religious group?"*

### **The 1998 and 2000 Fatwas**

**[10]** The primary grounds on which the Respondents sought the above prayers in their judicial review application are the 1998 and 2000 Fatwas which the Respondents argue, in effect declare the status of Ahmadiyya as 'non-Muslims', and consequentially render them exempt from the jurisdiction of the Selangor Syariah Courts and ARIE 2003.

**[11]** At this juncture, it is pertinent to narrate a brief history and legal effect of the Two Fatwas. Sometime in 1953, there was a trial before His Royal Highness the Sultan of Selangor to determine the status of the Ahmadiyya as Muslims. Upon completion of the trial, HRH the Sultan concluded on the evidence that the Ahmadiyya are not Muslims. The then Honourable Prime Minister of Malaysia, Tunku Abdul Rahman earmarked several plots of land for the Ahmadiyya with the view of enabling their community to profess and practise their religion in peace. These lands were originally

situated in Kampung Baru, Kuala Lumpur but the Respondents subsequently moved to Kampung Nakhoda and later to the Premises.

[12] Subsequently, in 1998 the State of Selangor gazetted a religious edict known as 'fatwa' ('**the 1998 Fatwa**') which denounced Ahmadiyya as non-Muslims ('*kafir*') and all followers of the Ahmadiyya are considered as apostates ('*murtad*'). In 2000, the State of Selangor gazetted another Fatwa ('**the 2000 Fatwa**') which amended the 1998 Fatwa by the addition of paragraph 2A, which states the legal implications on an Ahmadiyya, which are essentially these: the marriage of an Ahmadiyya may be dissolved pursuant to section 46 of the Selangor Islamic Family Law Enactment 1984; an Ahmadiyya cannot be a '*wali*' in the solemnisation of the marriage of his daughter(s); an Ahmadiyya cannot inherit the property of his Muslim family members; and an Ahmadiyya is not entitled to the special positions that are accorded to Malays pursuant to the Federal Constitution and State legislation, and in the event that such special position has been given to an Ahmadiyya, shall cease to have effect, and can be stripped, revoked and nullified, as the case may be by the relevant authority.

[13] In addition, there are two other important features about the aforementioned Two Fatwas. Firstly, according to section 49 of the ARIE

2003, a fatwa is binding on Muslims in the State of Selangor once it is gazetted. There is no dispute that the 1998 and 2000 Fatwas have been gazetted. As such, the Two Fatwas are therefore binding in the State of Selangor.

### **Decision of High Court**

[14] The findings and decision of the learned Judge in respect of the Two Questions are as follows:

#### **Question 1: The Jurisdiction of the Syariah Courts under Section 97(2) of ARIE 2003**

[15] This question forms the crux of Appeal 513. The primary issue in respect of Question 1 is, who has the jurisdiction to adjudicate upon offences under section 97(2) of the ARIE 2003? The learned Judge upon considering all the relevant provisions of the Federal Constitution concluded that the Syariah Courts are empowered to try offences under section 97(2) of the ARIE 2003 under Items 1 and 9 of List II of the Ninth Schedule of the Federal Constitution.

[16] We are of the view that in arriving at his decision, the learned Judge had correctly considered the two landmark judgments of the Federal Court

in ***Sulaiman Takrib v Kerajaan Negeri Terengganu; Kerajaan Malaysia (Intervener) & Other cases [2009] 2 CLJ 54*** and ***Fathul Bari Mat Jahya & Anor v Majlis Agama Negeri Sembilan & Others [2012] 4 CLJ 717***, where one of the issues raised was whether the alleged offences were offences within the ambit of ‘the precepts of the religion of Islam’? The two Federal Court judgments abovementioned point out that the term ‘precepts of the religion of Islam should be given a broad interpretation.

[17] The High Court had also considered the ‘pith and substance’ doctrine in ***Mamat bin Daud & Ors v the Government of Malaysia [1988] 1 CLJ (Rep.) 197***, and found that in pith and substance, section 97(2) of the ARIE 2003 is a State law regulating mosques, which is something central to the Islamic faith. The learned Judge concluded that section 97(2) of ARIE 2003 is within the ambit of the ‘precepts of the religion of Islam’ and hence, reading it with the phrase ‘mosques or any Islamic public place of worship’ in Item 1 of List II, concluded that the Syariah Courts are indeed clothed with the exclusive jurisdiction to try offences under section 97(2) of the ARIE 2003.

[18] We agree with the construction of the learned Judge in respect of Question 1. Thus, it is the Syariah Courts (and not the Magistrates’ Courts) which possess the jurisdiction to hear offences under section



97(2) of the ARIE 2003. In our considered view, there is no merit in the cross-appeal *i.e.* Appeal 513. Accordingly, we affirm the decision of the learned Judge in respect of Question 1.

## **Question II: The Jurisdiction of the Syariah Courts Over the Respondents**

**[19]** This issue constitutes the bone of contention between the parties in **Appeal 468**. The learned Judge answered the question in the affirmative *i.e.* that the Syariah Courts do not have jurisdiction over the Respondents or any Ahmadiyya.

**[20]** The learned Judge examined the legal effect of the Two Fatwas and concluded that legally, their effect was to excommunicate the Ahmadiyya from the Islamic community. Thus, the Ahmadiyya were no longer recognised as Muslims and hence, the Syariah Courts could have no jurisdiction over the Respondents.

**[21]** We observe that the learned Judge had accepted at face value that the Respondents were indeed persons professing and practising Ahmadiyya beliefs. After concluding that all of the Respondents were indeed members of the Ahmadiyya community, his Lordship held that the

Appellants had acted in excess of their jurisdiction and accordingly allowed the Respondents' application for judicial review culminating in the orders for various reliefs including declaration, *certiorari*, mandamus and prohibition against the respective Appellants.

### **Grounds of Appeal**

[22] We now focus on the appeal in respect of the decision of the learned Judge in Question II which is the subject of Appeal 468 before us. Appeal 468 is premised on the following grounds:

- (i) firstly, the learned Judge, erred by the mere application of the 1998 and 2000 Fatwas to make a finding that the Respondents are non-Muslims without regard to the presumption in section 74(2) of the ARIE 2003;
- (ii) secondly, the 1998 and 2000 Fatwas are of general application on the non-Muslim status of the Ahmadiyya in Selangor and accordingly, the learned Judge erred in law when his Lordship decided that the Respondents were non-Muslims, without first properly considering whether the Respondents are Ahmadiyya or not;
- (iii) thirdly, (an issue not ventilated in the Court below) the learned Judge failed to consider that the Malaysian

Respondents are designated the status of 'Islam' in their respective MyKad (identification cards), and thus their true religious identity is unclear.

[23] In respect of the first ground, the Appellants placed reliance on section 74(2) of the ARIE 2003 and the decision of the Federal Court in ***Kamariah Ali & Yang Lain Iwn Kerajaan Negeri Kelantan & Satu Lagi*** [2004] 3 CLJ 409. ('Kamariah Ali') which *inter alia*, decided that one cannot be allowed to escape Syariah prosecution simply by declaring that one has renounced the Islamic faith. Section 74(2) states as follows:

*'For the avoidance of doubt, it is hereby declared that a Muslim shall at all times be acknowledged and treated as a Muslim unless a declaration has been made by a Syariah Court that he is no longer a Muslim'.*

[24] The Appellants also place reliance on the decision of the Federal Court in ***Lina Joy Iwn Majlis Agama Islam Wilayah Persekutuan dan yang lain*** [2007] 4 MLJ 585 ('Lina Joy') for the proposition that in cases where a Muslim had subsequently converted out of Islam, the Syariah Courts possesses the jurisdiction to determine the current religious status of the person who had renounced Islam. Thus a self-declaration by a person that he is non-Muslim is insufficient in the eyes of the law, and that until and unless the Syariah Court makes a declaration that he is a non-

Muslim, he remains a Muslim in the eyes of the law, and thus section 74(2) as well as subsection 97(2) of ARIE 2003 would apply to him.

**[25]** The Appellants also claim that the 1998 and 2000 Fatwas are only of general application, and only serve to state that the Ahmadiyya belief is not Islam and any professors are not to be considered Muslims. What the Respondents must do, according to the Appellants, is to first apply to the Syariah Court for an order that they are not Muslims. A renunciation of Islam issued by the Syariah Court is a prerequisite to determine that the Respondents were not Muslims.

**[26]** The Appellants argued that they had proceeded on the basis of the local Respondents' MyKad which had designated their religion as 'Islam'. As such, they ought to have been given the opportunity to first investigate whether the Respondents are indeed Ahmadiyya.

**[27]** In response, the Respondents raise the following arguments: since the Ahmadiyya have been excommunicated *vide* the 1998 and 2000 Fatwas, the Ahmadiyya are not Muslims and thus, the Syariah Courts can have no jurisdiction over them. This means that the presumption in section 74(2) of the ARIE 2003 ought not to apply to them.

[28] The Respondents argued that the Syariah investigation and prosecution contravenes Article 11 of the Federal Constitution which gives the Ahmadiyya the right to practise their religion, which right was, despite the Two Fatwas recognised when the Ahmadiyya were designated lands (*'Bait-us Salam'*) to freely practise their faith.

[29] In respect of the religious identity stated in the MyKad, the Respondents submit that every Respondent had affirmed and filed an affidavit admitting that they are Ahmadiyya which the Appellants have not rebutted. The National President of the Ahmadi Jama'at had also filed an affidavit stating that the Respondents are of the Ahmadiyya community which affidavit also remains unrebutted by the Appellants. In addition, according to **regulation 24(1) of the National Registration Regulations 1990 ("NRR 1990")** the burden to prove the contents of MyKad lies on the person alleging the truth thereof. The Appellants, who alleged that the Respondents are 'Islam' have not adduced any evidence to show that the Respondents are not Ahmadiyya. It was argued further that it would contravene Article 8 of the Federal Constitution to discriminate between local Ahmadiyya and their non-citizen counterparts solely on the basis of the MyKad (something which only the locals possess).

## OUR DECISION

[30] As mentioned earlier, our Federal Constitution demarcates between two legal systems, the civil courts and the Syariah Courts. Article 121(1A) of the Federal Constitution expressly provides that the High Courts shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts. The matters related to Syariah is defined in Item I, List II of the Ninth Schedule of the Federal Constitution. For one, the respective legislative entries in the said Item 1 must be given the widest possible meaning. This is from the pronouncements of the Federal Court in ***Sulaiman Takrib (supra)*** and ***Fathul Bari (supra)***. At the same time, the reach of the Syariah Courts' jurisdiction is strictly confined to persons professing the "religion of Islam".

### Freedom of Religion

[31] Article 11(1) of the Federal Constitution guarantees every person the right to profess and practise his religion as well as the right to manage his own religious affairs. The only restrictions to Article 11 is contained in Articles 11(4) and 11(5). Article 11(5) prohibits the propagation of any religious doctrine other than Islam to persons professing the religion of Islam. Article 11(5) prohibits any act contrary to any general law relating

to public order, public health or public morality which may be done in the name of religion.

**[32]** The Respondents cannot be presumed to be Muslims under section 74(2) of the ARIE 2003 and be non-Muslims pursuant to the Two Fatwas, as these two contradictory positions are irreconcilable.

### **Apostasy/ Renunciation of Islam**

**[33]** The issue of renunciation of Islam arises, in particular in cases where a person declares his intention to convert out of Islam, and in cases like ***Lina Joy (supra)***, consequentially to have the designation 'Islam' deleted from her MyKad. In effect this would render him an apostate. The question then arises whether by such declaration, he remains subject to the jurisdiction of the Syariah courts.

**[34]** In this respect the civil Courts appear to make a distinction between conversions out of Islam by those who were Muslims by original faith and those who were non-Muslims by original faith. In the former, premised on their original faith, they were subject to the jurisdiction of the Syariah courts and require a renunciation in the Syariah court to confirm their non-Muslim status. As for the latter, it is on the premise that they were non-

Muslims to begin with and therefore not subject to the jurisdiction of the Syariah courts, that no such renunciation of Islam was required for any supposed renunciation of their Islamic 'faith'. Any renunciation of the Islamic faith is within the jurisdiction of the Syariah Courts. In the cases of **Lina Joy, (supra)** and **Soon Singh (supra)** the Federal Court held that the jurisdiction of the Syariah Court to deal with conversion out of Islam, although not expressly provided for in some State Enactments, can be read into those Enactments by implication.

**[35]** To clarify, if a person was born and raised as an Ahmadiyya, then his original religion is the Ahmadiyya religion. Because the Two Fatwas declare that his faith is not Islam, then in the State of Selangor, an Ahmadiyya is a non-Muslim just as a Christian or a Hindu is a non-Muslim. If however, a person is born and raised as a Muslim (whether he chooses to practise his beliefs or not), he is in law a person 'professing the religion of Islam'. Should he change his religion from Islam to Ahmadiyya, just as if he were to attempt to renounce Islam for any other faith, he cannot in law do so unless by order of the Syariah Court as prescribed by the relevant State law.

**[36]** Thus, the question which arises before us is whether the Respondents herein are indeed Ahmadiyya by original faith or were



Muslims by original faith but had subsequently converted from Islam to Ahmadiyya?

### **My Kads and Religious Identity**

**[37]** The Appellants placed reliance on the word 'Islam' on the face of (at least some) of the Respondents' MyKad. The particulars in a MyKad is not presumptive of one's identity. This is premised on **Regulation 24 of the NRR 1990**. Thus, we are of the view a MyKad is not conclusive evidence of religious identity.

**[38]** The issuance of a MyKad is governed by Federal law. However, the religious identity of a person is governed by State law. Thus, there may be contradictory positions of religious identity between what is stated on a MyKad and what has been determined by a State's Enactment. In the instant case, the Malaysian Respondents possess MyKads which state 'Islam' as their religion, but being Ahmadiyya, the two Fatwas in Selangor have denounced the Ahmadiyya as non-Muslims.

**[39]** In this respect, Articles 74(2), 76(1) and 76(2) of the Federal Constitution is pertinent. Given the clear demarcation of legislative powers, the authority to determine whether a person professes Islam is

something clearly within the powers of the State Legislature derived collectively from Article 74(2) and Item 1 of List II of the Ninth Schedule respectively of the Federal Constitution. Whether or not the federal promulgated law designates someone a Muslim or otherwise in their MyKad is therefore not conclusive of the religious identity of the person concerned and consequently, the issue has to be determined in reference to the relevant State Enactments.

**[40]** In respect of the Malaysian Respondents, the Appellants contention is that during the course of their investigation, they had relied not only on the religious identity as stated in the MyKads of the Malaysian Respondents, but also on the fact that the Malaysian Respondents possessed 'Malay' features and thus it was reasonable, without any evidence to the contrary, to assume that the Respondents were Muslims and therefore, subject to the jurisdiction of the Syariah Courts and the enforcement of ARIE 2003.

**[41]** Section 79 establishes the role of Religious Enforcement Officers whose main duty is to carry out the investigation of offences under this Enactment or under any other written law prescribing offences against the precepts of Islam by "persons professing the religion of Islam". How is a Religious Enforcement officer to know whether or not a specific person is

or is not in that class? Thus, while MyKads are by no means conclusive proof of a person's religious identity, it therefore remains open to any person with a MyKad designated as 'Islam' to proffer proof he is not what his MyKad says he is.

### **Equality before the Law : Article 8 of the Federal Constitution**

[42] We will now address the Respondents' arguments in respect of Article 8 of the Federal Constitution. Applying Regulation 24 of the NRR 1990, MyKads are not presumptive of religious identity. In the case of foreigners, we see no impediment to their right also to produce any credible proof of their religious identity. From wherever the Respondents are, it is for them to prove on evidence their religious status as Ahmadiyya.

[43] The common requirement for both non-Malaysians and Malaysians is that the evidence proffered is credible evidence of the religious status of the respective Respondents. The treatment accorded is the same and no discrimination between the Malaysian and non-Malaysian Respondents.

[44] The next question is: Who bears the burden to prove that a person 'professes the religion of Islam'? **Regulation 4(cc) (v) of the NRR 1990**

requires that any person who is required to register under the Regulations shall give the relevant particulars including 'his religion'. The evidential rule expressed in **Regulation 24 of the NRR 1990** is basically a repetition of the cardinal rules of evidence as contained in **sections 101 and 102 of the Evidence Act 1950**. We are of the considered view that the burden to establish that the Respondents are indeed Ahmadiyya lies on them because their faith is a fact especially within their knowledge.

**[45]** In terms of seeking factors to determine one's religious identity, we found some guidance from a very recent judgment of the English Court of Appeal in ***WA (Pakistan) v The Secretary of State for the Home Department* [2019] EWCA Civ 302** ('**WA (Pakistan)**'). The main issue in that case was whether the appellant, who claimed to be an Ahmadiyya had satisfied the test to acquire refugee status. The English Court of Appeal appeared to affirm the two-step process taken by the decision-makers below it in that (i) the decision-maker must satisfy himself whether the asylum-seeker is indeed Ahmadiyya; and (ii) whether his continuing practise of his faith would indeed lead to his persecution.

**[46]** In the ***WA (Pakistan)*** case, the Court of Appeal, at paragraph 60, approved the following approach taken by a tribunal in another case, that

is, *MN and others (Ahmadis – country conditions – risk) Pakistan CG*

[2012] UKUT 00389(IAC), headnote 5:

*“In light of the above, the first question the decision-maker must ask is (1) whether the claimant genuinely is an Ahmadi. As with all judicial fact-finding the judge will need to reach conclusions on all the evidence as a whole giving such weight to aspects of that evidence as appropriate in accordance with Article 4 of the Qualification Directive. This is likely to include an enquiry whether the claimant was registered with an Ahmadi community in Pakistan and worshipped and engaged there on a regular basis. Post-arrival activity will also be relevant. Evidence likely to be relevant includes confirmation from the UK Ahmadi headquarters regarding the activities relied on in Pakistan and confirmation from the local community in the UK where the claimant is worshipping.”*

[Emphasis added]

[47] In ascertaining religious identity, the English Courts do not have to consider the issue of whether someone is Ahmadi by original faith or by conversion from Islam. Thus, we caution that any guidelines adopted from England or any other country will therefore have to be treated with caution bearing in mind the provisions of our Federal Constitution, as well as relevant state laws and legal precedents.

## **The Respondents' Religious Status – Evaluating the Evidence**

[48] We have already noted that the learned Judge did not undertake an evidential analysis to determine whether the Respondents or any one of them is either an Ahmadi by original belief or an Ahmadi by reason of his or her renunciation of the religion of Islam. We are of the considered view that in respect of Question 2 the approach taken by the Court below was, with respect, incorrect. This distinction is important in the light of ***Kamariah Ali (supra)***, ***Lina Joy (supra)*** and ***Soon Singh (supra)*** which states that in cases where a Muslim had converted out of Islam, a renunciation of Islam by the Syariah Court is a pre-requisite.

[49] Of the 39 Respondents in this case, 28 are Malaysians (two of whom are minors), 8 are Pakistani (one of whom is a minor), 2 are Indian and one is Indonesian. The evidence in relation to each of the Respondents is voluminous. Since the issue was not canvassed in the Court below, neither the Appellants nor the Respondents made any submissions as to the factual status of any of the Respondents in the High Court.

[50] Prayer (g) of the Respondents' application for judicial review sought the following alternative relief:

*“(g) In the alternative, an order in the nature of prohibition against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Appellants and their servants, officers and/or agents from conducting investigations or continuing investigations against the Respondents or each of them **if the Respondents or each of them procures proof or evidence to the 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> Appellants that they are followers of the teachings of the Ahmadiyah/Qadiani.**”*

[51] Thus, in our considered view, the learned Judge should have allowed an investigation into the Respondents’ religious status. Accordingly, we are of the view that in fairness to all parties, the opportunity be given to the Respondents to make their case in accordance with prayer (g) at the High Court.

## **CONCLUSION**

[52] We accordingly conclude our judgment as follows: In respect of Appeal 513, we are of the view that the learned Judge had correctly decided that it is the Syariah Courts and not the Magistrates’ Court which have jurisdiction to try section 97(2) offences under the ARIE 2003. We accordingly dismiss appeal 513.

**[53]** In respect of Appeal 468, premised on prayer (g) of the Respondents' application for judicial review, the Respondents', themselves are willing to accept that the relief sought may be contingent upon them adducing proof that they are followers of the Ahmadiyya faith. Accordingly, we allow Appeal 468 in part and the order of the High Court in Appeal 468 is hereby set aside.

**[54]** We accordingly remit the matter of Appeal 468 to the High Court to allow parties to make further submissions on the evidence already on record in accordance with prayer (g) of the Respondents' application for judicial review. For expediency, we hereby direct that the matter be fixed for case management at the High Court of Shah Alam forthwith.

### **POSTSCRIPT – Ambiguity of Religious Status**

**[55]** In conclusion, we revert to the seminal question posed at the forefront of this judgment: who is a person “professing the Religion of Islam”? The crux of the matter in the instant case lies in the ambiguity of the religious status of the Respondents and in particular, the Malaysian Respondents who carry MyKads which list their religious status as Islam, when they claim to be Ahmadiyya. The answer will necessarily have to be



determined on a case by case basis pursuant to the respective State laws, the Federal Constitution as well as relevant judicial precedents.

**[56]** This ambiguity in religious status poses a serious problem. While we may have addressed the pertinent issues in this case, we can foresee difficult questions that may arise in similar cases in the future. The Ahmadiyya are, as are all other persons, entitled to the freedom of religion subject to Articles 11(4) and (5) of the Federal Constitution. But because of the dual legal system in Malaysia, their status, as to whether they are Muslims or not, coupled by the fact that their MyKad may state their religion to be 'Islam' (though not conclusive of their religious identity) may give rise to ambiguity in their religious status.

**[57]** Perhaps appropriate measures should be taken by the relevant authorities to identify conclusively who is an Ahmadiyya to prevent future investigation and prosecution of genuine Ahmadis. While the Ahmadiyya are not considered Muslims in States like Selangor and Kedah, they might not have been excommunicated in other States. What is the status of the Ahmadiyya in the latter? Will they be subject to the jurisdiction of the respective Syariah Courts? What is clear is that any ambiguity in their religious status may expose them to the risk of prosecution and investigation by the respective Syariah Courts.

**[58]** This judgment addresses a specific case unique to the facts and the Two Fatwas which are valid and binding in Selangor. Perhaps it is timely that all the States in Malaysia, along with the Federal Government work out a unified regime as well as a proper mechanism to determine the religious status of the Ahmadiyya so that they are not put at risk of Syariah investigation and prosecution.

**NOTE**

**This summary is merely to assist in understanding the Court's judgment. The full judgment of the Court is the only authoritative document.**