ZI Publications Sdn Bhd & Anor v Kerajaan Negeri Selangor (Kerajaan Malaysia & Anor, intervener)

FEDERAL COURT (PUTRAJAYA) — PETITION NO 1–12 OF 2012(B)
RAUS SHARIF PCA, ZULKEFLI CJ (MALAYA), ABDULL HAMID EMBONG, AHMAD MAAROP AND ABU SAMAH NORDIN FCJJ
28 SEPTEMBER 2015

Constitutional Law — Legislation — Validity of legislation — Books confiscated based on suspicion of commission of offences — Whether Selangor State Legislative Assembly had power to enact law and had acted within constitutional framework of Federal Constitution — Whether legislation valid and ultra vires Federal Constitution — Syariah Criminal Offences (Selangor) Enactment 1995, s 16

The first petitioner was a publishing company while the second petitioner was the majority shareholder and director of the company. The first petitioner had published a book 'Allah, Kebebasan dan Cinta' ('the book'), the Malay translation of a book titled 'Allah, Love and Liberty' written by a Canadian author, Irshad Manji. The Enforcement Division of the Selangor Islamic Affairs Department raided the first petitioner's office and confiscated 180 copies of the book on suspicion of commission of offences under s 16 of the Syariah Criminal Offences (Selangor) Enactment 1995 ('the impugned section'). The second petitioner was charged before the Syariah Court Selangor with offences under the impugned section. The petitioners filed the present petition, seeking a declaration that the impugned section was invalid on the ground that the Selangor State Legislative Assembly ('SSLA') had no power to enact such a law, as it was a matter which only Parliament had the power to legislate pursuant to art 10(2)(a) of the Federal Constitution ('the Constitution').

Held, dismissing the petition:

(1) No one provision of the Constitution can be considered in isolation. Article 10 of the Constitution must be read in particular with arts 3(1), 11, 74(2) and 121. There was no doubt what the SSLA did in this case was within the constitutional framework of the Constitution. The purpose of the SSLA in enacting the impugned section was clear, which was to control religious publication contrary to Islam. It was also a measure to prohibit the dissemination of any wrongful belief and teaching among Muslims, through publication of any book or document or any form of record containing anything which is contrary to Islamic law (see paras 16–17 & 27).

(2) What is contrary to Islamic law is without doubt against the precepts of Islam. Thus, the SSLA was acting within its legislative power in enacting the impugned section. It was an offence against the precepts of Islam and precepts of Islam was not found in the Federal List. In consequence, there was no merit in the petitioners' argument that in enacting the impugned action, the SSLA was in fact enacting on a matter in the Federal List. The impugned section enacted by the SSLA clearly fell within the scope of precept of Islam. It was not a matter included in the Federal List and the punishment imposed was within the limit set by s 2 of the Syariah Courts (Criminal Jurisdiction) Act 1965. The impugned section was therefore valid and not ultra vires the Constitution (see para 27–28).

[Bahasa Malaysia summary

Pempetisyen pertama adalah syarikat penerbitan sementara pempetisyen kedua adalah pemegang saham majoriti dan pengarah syarikat. Pempetisyen pertama telah menerbitkan buku bertajuk 'Allah, Kebebasan dan Cinta' ('buku tersebut'), terjemahan Bahasa Melayu daripada buku bertajuk 'Allah, Love and Liberty' yang ditulis oleh penulis Kanada, Irshad Manji. Bahagian Penguatkuasa Jabatan Hal Ehwal Agama Islam Negeri Selangor menyerbu pejabat pempetisyen pertama dan merampas 180 salinan buku kerana disyaki melakukan kesalahan di bawah s 16 Enakmen Kesalahan Jenayah Syariah (Negeri Selangor) 1995 ('seksyen yang dipersoalkan'). Pempetisyen kedua dituduh di hadapan Mahkamah Syariah Selangor dengan kesalahan di bawah seksyen yang dipersoalkan tersebut. Pempetisyen-pempetisyen memfailkan tindakan ini, memohon perisytiharan bahawa seksyen yang dipersoalkan adalah tak sah atas alaasan bahawa Dewan Undangan Negeri Selangor ('DUNS') tidak mempunyai kuasa untuk menggubal undang-undang sedemikian, kerana ia adalah perkara yang hanya Parlimen mempunyai kuasa untuk menggubal undang-undang berikutan perkara 10(2)(a) Perlembagaan Persekutuan ('Perlembagaan').

Diputuskan, menolak petisyen:

(1) Tiada satu pun peruntukan Perlembagaan boleh dipertimbangkan secara berasingan. Perkara 10 Perlembagaan mesti dibaca khususnya dengan perkara-perkara 3(1), 11, 74(2) dan 121. Tidak terdapat kesangsian bahawa apa yang dibuat oleh DUNS dalam kes ini adalah dalam rangka berperlembagaan Perlembagaan. Tujuan DUNS dalam menggubal seksyen yang dipersoalkan adalah jelas, yang mana adalah untuk mengawal penerbitan keagamaan bertentangan Islam. Ia juga adalah langkah untuk melarang penyebaran apa-apa kepercayaan salah dan pengajaran di kalangan orang Islam, melalui penerbitan apa-apa buku atau dokumen atau apa-apa bentuk laporan yang mengandungi apa-apa yang bertentangan undang-undang Islam (lihat perenggan 16–17 & 27).

(2) Apa yang bertentangan undang-undang Islam adalah tanpa ragu-ragu

bertentangan ajaran agama Islam. Oleh itu, DUNS bertindak dalam kuasa undang-undangnya dalam menggubal seksyen yang dipersoalkan tersebut. Ia adalah satu kesalahan terhadap ajaran Islam dan ajaran Islam tidak didapati dalam Senarai Persekutuan. Akibatnya, tiada merit dalam hujahan pempetisyen bahawa dalam menggubal seksyen yang dipersoalkan tersebut, DUNS sebenarnya menggubal perkara dalam Senarai Persekutuan. Seksyen yang dipersoalkan tersebut yang digubal oleh DUNS jelas terangkum dalam skop ajaran Islam. Ia bukan perkara yang termasuk dalam Senarai Persekutuan dan hukuman yang dikenakan adalah dalam had yang ditetapkan oleh s 2 Akta Mahkamah Syariah (Bidang kuasa Jenayah) 1965. Seksyen yang dipersoalkan tersebut oleh itu sah dan bukan melampaui bidang kuasa Perlembagaan (lihat perenggan 27–28).]

Notes

For cases on legislation in general, see 3(2) *Mallal's Digest* (5th Ed, 2015) paras 2980–2999.

Cases referred to

Danaharta Urus Sdn Bhd v Kekatong Sdn Bhd (Bar Council Malaysia, intervener) [2004] 2 MLJ 257, FC (refd)

Fathul Bari bin Mat Jahya & Anor v Majlis Agama Islam Negeri Sembilan & Ors [2012] 4 MLJ 281; [2012] 4 CLJ 717, FC (refd)

Mamat bin Daud & Ors v Government of Malaysia [1988] 1 MLJ 119, SC (refd)

Sulaiman bin Takrib v Kerajaan Negeri Terengganu (Kerajaan Malaysia, intervener) and other applications [2009] 6 MLJ 354; [2009] 2 CLJ 54, FC (refd)

Legislation referred to

Federal Constitution arts 3(1), 4(4), 10, 10(1)(a), (2), (2)(a), 11, 11(4), 74(2), 76(1)(a), (1)(b), (1)(c), 121, 121(1), (1A), Ninth Schedule, Federal List, State List, Item 1, Concurrent List

Printing Presses and Publications Act 1984

Syariah Courts (Criminal Jurisdiction) Act 1965 s 2

Syariah Criminal (Negeri Sembilan) Enactment 1992 s 53, 53(1)

Syariah Criminal Offences (Selangor) Enactment 1995 s 16

Syariah Criminal Offences (Takzir) (Terengganu) Enactment 2001 ss 10, 14

Malik Imtiaz (Nizam Bashir, Pavendeep Singh and Chan Wei June with him) (Bashir & Co) for the petitioners.

Ahmad Fuad bin Othman (Mohamad Mustaffa bin P Kunyalam and Rafiqha Hanim bt Mohd Rosli with him) (Selangor State Legal Advisor) for the first respondent.

Suzana bt Atan (Deputy Head of Division II, Attorney General's Chambers) for the second respondent.

Mubashir bin Mansor (Wan Ahmad Dzaffran bin Wan Kamaruddin, Damian Keithan and Alif Ridhwan bin Mohd Yusof with him) (Hisham Sobri & Kadir) for the third respondent.

Raus Sharif PCA (delivering judgment of the court):

INTRODUCTION

[1] This petition was filed pursuant to art 4(4) of the Federal Constitution and leave was granted by this court on 8 April 2013. The petitioners are seeking for a declaration that s 16 of the Syariah Criminal Offences (Selangor) Enactment 1995 ('the impugned section') is invalid. The impugned section reads as follows:

> 16 Religious publication contrary to Islamic law.
>
> (1) Any person who —
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> (a) prints, publishes, produces, records or disseminates in any manner any book or document or any other form of record containing anything which is contrary to Islamic law; or
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> (b) has in his possession any such book, document or other form of record for sale or for the purpose of otherwise disseminating it,
>
> shall be guilty of an offence and shall be liable on conviction to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.
>
> (2) The Court may order any book, document or other form of record referred to in subsection (1) to be forfeited and destroyed notwithstanding that no person may have been convicted of an offence in connection with such book, document or other form of record.

[2] The petition is premised on the basis that the impugned section has the effect of restricting and/or has the potential to restrict freedom of expression, a matter upon which Selangor State Legislative Assembly ('SSLA') has no power to legislate. It is a matter which only Parliament has the power to legislate pursuant to art 10(2)(a) of the Federal Constitution.

[3] In this petition, the petitioners named the Selangor State Government as the respondent. Subsequently, the Federal Government and the Majlis Agama Islam Selangor ('MAIS') were added in as interveners to the proceedings.

A BACKGROUND FACTS

[4] The background facts leading to the filing of the petition are these. The first petitioner, ZI Publications Sdn Bhd is a publishing company. The second petitioner, a Muslim named Mohd Ezra bin Mohd Zaid is the majority shareholder of the company. He is also the director of the company.

[5] In May 2012, the first petitioner published a book 'Allah, Kebebasan dan Cinta' ('the book'), the Malay translation of a book titled 'Allah, Love and Liberty' written by a Canadian author, Irshad Manji.

[6] On 29 May 2012, the Enforcement Division of the Selangor Islamic Affairs Department raided the first petitioner's office and confiscated 180 copies of the book on suspicion of commission of offences under the impugned section.

[7] Consequently on 7 March 2013, the second petitioner was charged before the Syariah Court Selangor with offences under the impugned section. Hence, this petition was filed by the petitioners seeking a declaration that the impugned section is invalid as the SSLA has no power to enact such law.

ISSUES TO BE DETERMINED

[8] The petitioners submitted the following issues to be determined by this court:

(a) whether the SSLA has the power to enact a law which is restrictive and/or has the potential to restrict freedom of expression ('first issue');

(b) alternatively, whether the SSLA can enact the impugned section in contravention of Part II of the Federal Constitution ('second issue'); and

(c) whether Parliament's powers to enact laws in relation to matters in the State List can only be exercised in the circumstances set out in art 76(1)(a), (b) and (c) of the Federal Constitution ('third issue').

H FIRST ISSUE AND SECOND ISSUE

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

> Article 74 Subject matter of Federal and State laws.
>
> (1) Without prejudice to any power to make laws conferred on it by any other Article, Parliament may make laws with respect to any of the matters

enumerated in the Federal List or the Concurrent List (that is to say, the First or Third List set out in the Ninth Schedule). A

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

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

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

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

List II — State List.

1. Except with respect to the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, Islamic law and personal and family law relating to succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy, guardianship, gifts, partitions and non charitable trusts; wakafs and the definition and regulation of charitable and religious trusts, the appointment of trustees and the incorporation of persons in respect of Islamic religious and charitable endowments, institution, trusts, charities and charitable institutions operating wholly within the State, Malay customs, Zakat Fitrah and Baitulmal or similar Islamic religious revenue, mosques or any Islamic public places of worship, *creation and punishment of offences by persons professing the religion of Islam against precepts of that religion, except in regard to matters included in the Federal List*, the constitution, organisation and procedure of Syariah Courts, which shall have jurisdiction only over persons professing the religion of Islam and in respect only of any of the matters included in this paragraph, but shall not have jurisdiction in respect of offences except in so far as conferred by federal law; the control of propagating doctrines and beliefs among persons professing the religion of Islam, the determination of matters of Islamic law and doctrine and Malay custom. (Emphasis added.) E F G H

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

the Syariah Courts in this country in respect of offences against the precept of Islam by persons professing that religion. Section 2 of the said Act provides:

> 2 The Syariah Courts duly constituted under any law in a State and invested with jurisdiction over persons professing the religion of Islam and in respect of any of the matters enumerated in List II of the State List of the Ninth Schedule to the Federal Constitution are hereby conferred jurisdiction in respect of offences against precepts of the religion of Islam by person professing that religion which may be prescribed under any written law:
>
> Provided that such jurisdiction shall not be exercised in respect of any offence punishable with imprisonment for a term exceeding three years or with fine exceeding five thousand ringgit or with whipping exceeding six strokes or with any combination thereof.

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

[13] Consequently, it was submitted that as the Federal Government: is empowered to legislate on (a) 'Newspaper; publication; publishers, printing and printing presses'; (b) criminal offences based on its legislative power relating to '... criminal law and procedure ...' on range of matters including '... the creation of offences in respect of any of the matters included in the Federal List or dealt with by federal law ...', and as criminal offences generally related to printing are already dealt with by the federal law known as the Printing Presses and Publications Act 1984, the respondent therefore cannot enact offences on printing and printing presses.

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

> (2) Parliament may by law imposed —
>
> (a) on the rights conferred by paragraph (a) Clause (1) such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality

> and restrictions designed to protect the privileges of Parliament or of any Legislative Assembly orto provide against contempt of court, defamation or incitement to any offence.

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

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

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

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

> (4) State Law and in respect of the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, federal law may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam.

[18] In *Mamat bin Daud & Ors v Government of Malaysia* [1988] 1 MLJ

119, this court in its majority judgment had held that art 11(4) is the power which enables states to pass a law to protect the religion of Islam from being exposed to the influences of the tenets, precepts and practices of other religions or even of certain schools of thoughts and opinions within the Islamic religion itself. It was also stated in that case that to allow any Muslim or groups of Muslim to adopt divergent practice and entertain differing concepts of Islamic religion may well be dangerous and could lead to disunity among Muslims and, therefore could affect public order in the states. Hence, it was held that it was within the power of the State to legislate laws in order to control or stop such practices.

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

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

[21] We are of the view art 10 is to be read harmoniuosly with the above-mentioned articles. There can be no doubt what the SSLA did in this case was within the constitutional framework of the Federal Constitution. Clearly the SSLA was not enacting offences on printing or printing presses. The SSLA was enacting offences against the precepts of Islam. What offences and punishment that can be enacted under the Item 1 of the State List was duly considered by this court in *Sulaiman bin Takrib v Kerajaan Negeri Terengganu (Kerajaan Malaysia, intervener) and other applications* [2009] 6 MLJ 354; [2009] 2 CLJ 54 (*Sulaiman bin Takrib*). Abdul Hamid Mohamad CJ pointed out that the creation and punishment of offences under Item 1 of the State List have four limitations:

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

(b) it is against the precepts of Islam;

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

(d) it is within the limit set by s 2 of the Syariah Courts (Criminal Jurisdiction) Act 1965.

[22] In *Sulaiman bin Takrib*, the petitioner, a Muslim was charged with offences under ss 10 and 14 of the Syariah Criminal Offences (Takzir) (Terengganu) Enactment 2001('the Terengganu Enactment'). The charge under s 10 was for acting in contempt of a religious authority by defying or disobeying the *fatwa* regarding the teaching and belief of Ayah Pin that was published in the Government *Gazette* of the State of Terengganu on 4 December 1997. The charge framed under s 14 was for possession of a VCD, the content of which was contrary to *hukum syariah*.

[23] One of the issues raised by the petitioner in that case was that the power to create offences under Item 1 of State List of the Ninth Schedule of the Federal Constitution was limited to the creation of offences against the precepts of Islam and that offences under ss 10 and 14 of the Terengganu Enactment were not offences against the precepts of Islam and the Terengganu State Legislative Assembly was not empowered to enact the said provisions. It was also contended that the offences in question were 'criminal law' and thus within the Federal jurisdiction to legislate.

[24] Abdul Hamid Mohamed CJ, in addressing the issue held that 'precepts of Islam' include 'law' or 'syariah' and the Federal Constitution uses the term 'Islamic Law' which in the Malay translation is translated as 'Hukum Syariah'. It was pointed out that all the laws in Malaysia whether federal or state, use the term 'Islamic Law' and 'Hukum Syariah' interchangeably. Thus, on the offence created by s 14 of the Terengganu Enactment, the key words 'contrary to Hukum Syariah' means the same thing as precept of Islam. Even if it is not so, by virtue of the provision of the Federal Constitution, the words 'Hukum Syariah' as used in Terengganu Enactment and elsewhere where offences are created must necessarily be within the ambit of 'precept of Islam'. Thus, it was held that the offence created by s 10 of the Terengganu Enactment is also an offence regarding the precept of Islam. Since the offences were against the precept of Islam and since there is no similar offence in Federal law and the impugned offence cover Muslims only and pertaining to Islam only, it clearly could not be argued that they were 'criminal law' as envisaged by the Federal Constitution.

[25] The decision in *Sulaiman bin Takrib* was followed by this court in *Fathul Bari bin Mat Jahya & Anor v Majlis Agama Islam Negeri Sembilan & Ors* [2012] 4 MLJ 281; [2012] 4 CLJ 717 (*Fathul Bari*). In that case, the first petitioner was charged in the Syariah Subordinate Court Negeri Sembilan for an offence under s 53(1) of the Syariah Criminal (Negeri Sembilan) Enactment 1992 ('the Negeri Sembilan Enactment') for conducting a religious talk

without a 'tauliah', while the second petitioner was charged with abetting the offence. Both the petitioners sought to challenge the validity and constitutionality of the said s 53. It was argued that the s 53 was invalid for breaching art 74(2) and Item 1, State List, Ninth Schedule of the Federal Constitution and since s 53 did not fall within the realm of Item 1, the Syariah Court of Negeri Sembilan therefore had no jurisdiction to try an offence under the section. It was further contended by the petitioners that the teaching of the religion of Islam without a 'tauliah' is not an offence against the pillars or precepts of Islam and the State Legislature therefore had exceeded its legislative authority when it enacted s 53 and made it such an offence.

[26] Arifin Zakaria CJ, speaking for the Federal Court held amongst others that the purpose of s 53 of the Negeri Sembilan Enactment was to protect the integrity of 'aqidah', 'syariah' and 'akhlak' which constitute the precepts of Islam. The requirement for the *tauliah* is necessary to ensure that only a person who is qualified to teach the religion is allowed to do so. This is a measure to stop the spread of deviant teachings among Muslims. It is commonly accepted that deviant teaching among Muslims is an offence against the precept of Islam. Hence, it follows that the State Legislature of Negeri Sembilan had acted within its legislative power in enacting s 53 of the Negeri Sembilan Enactment.

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

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

THIRD ISSUE

[29] The third issue raised was whether Parliament's power to enact law in relation to matters in the State List can only be exercised in the circumstances

set out in art 76(1)(a), (b) and (c) of the Federal Constitution. The said article reads as follows:

> 76(1) Parliament may make laws with respect to any matter enumerated in the State List, but only as follows, that is to say:
>
> (a) for the purpose of implementing any treaty, agreement or convention between the Federation and any other country, or any decision of an international organisation of which the Federation is a member; or
>
> (b) for the purpose of promoting uniformity of the laws of two or more States; or
>
> (c) if so requested by the Legislative Assembly of any State.

[30] In light of our conclusion on the first and second issue, we are of the view that there is no real necessity to deal with the third issue. The arguments raised on the third issue was purely academic in nature and answering it would not affect the position of the parties or would not have any bearing in the outcome of this petition.

CONCLUSION

[31] In conclusion we wish to highlight that a Muslim in Malaysia is not only subjected to the general laws enacted by Parliament but also to the state laws of religious nature enacted by Legislature of a state. This is because the Federal Constitution allows the Legislature of a state to legislate and enact offences against the precepts of Islam. Taking the Federal Constitution as a whole, it is clear that it was the intention of the framers of our Constitution to allow Muslims in this country to be also governed by Islamic personal law. Thus, a Muslim in this country is therefore subjected to both the general laws enacted by Parliament and also the state laws enacted by the Legislature of a state.

[32] For the above reasons, we hold that the impugned section as enacted by the SSLA is valid and not ultra vires the Federal Constitution. The petition is dismissed.

[33] After hearing parties we make no order as to costs.

Petition dismissed.

Reported by Afiq Mohamad Noor