



**IN THE SUPREME COURT OF NAURU**  
**AT YAREN**

Case No. 26 of 2016

IN THE MATTER OF an appeal  
against a decision of the Refugee  
Status Review Tribunal TFN  
T15/00300, brought pursuant to s 43  
of the *Refugees Convention Act*  
1972

BETWEEN

**TTY 167**

Appellant

AND

**THE REPUBLIC**

Respondent

Before: Marshall J  
Appellant: Self-represented  
Respondent: Catherine Symons  
Date of Hearing: 22 November 2017  
Date of Judgment: 20 February 2018

**CATCHWORDS**

APPEAL – Refugee Status Review Tribunal – whether Tribunal denied Appellant natural justice by not adjourning hearing – where Appellant failed to attend the hearing – where there was no request for an adjournment – whether the Tribunal was unreasonable or biased – s 41 of the *Refugees Convention Act 2012* (Nr) – APPEAL DISMISSED.

## JUDGMENT

1. This matter is before the Court pursuant to section 43 of the *Refugees Convention Act 2012* ("the Act") which provides:

### **43 Jurisdiction of the Supreme Court**

- (1) A person who, by a decision of the Tribunal, is not recognised as a refugee may appeal to the Supreme Court against that decision on a point of law.
- (2) The parties to the appeal are the Appellant and the Republic.  
...

2. The determinations open to this Court are defined in section 44 of the Act:

### **44 Decision by Supreme Court on appeal**

- (1) In deciding an appeal, the Supreme Court may make either of the following orders:

- (a) an order affirming the decision of the Tribunal;
- (b) an order remitting the matter to the Tribunal for reconsideration in accordance with any directions of the Court.

3. The Refugee Status Review Tribunal ("the Tribunal") delivered its decision on 3 July 2016 affirming the decision of the Secretary of the Department of Justice and Border Control ("the Secretary") of 9 October 2014, that the Appellant is not recognised as a refugee under the 1951 Refugees Convention<sup>1</sup> relating to the Status of Refugees, as amended by the 1967 Protocol relating to the Status of Refugees ("the Convention"), and is not owed complementary protection under the Act.
4. The Appellant filed a Notice of Appeal with this Court on 24 November 2016, falling outside the 42-day period within which to file a Notice of Appeal provided for in s 43(3) of the Act. On 6 September, an order was made extending the time of filing to 25 November 2015, validating the Notice of Appeal.

## BACKGROUND

5. The Appellant is a single male from the Chittagong Division of Bangladesh. He is of Bengali ethnicity and Muslim religion. He has completed seven years of education but has never had paid employment. His parents and two brothers and sister live in the Bhuianpara suburb of Bangladesh.

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<sup>1</sup>1951 Refugee Convention and 1967 Protocol, also referred to as "the Refugees Convention" or "the Convention".

6. The Appellant claims a fear of harm arising from his alleged involvement with the Jamaat-e-Islami ("Jel") political party, and attacks on the Appellant and his family from members of the opposition party, the Awami League ("AL"). The Appellant also claims a fear of harm based on his Muslim religion, and membership of the particular social group of someone who has sought asylum in another country.
7. The Appellant travelled to Indonesia in May 2013, and from there boarded a boat that arrived in Australia on 19 August 2013. The Appellant was transferred to Nauru on 5 July 2014 for the purposes of having his claims assessed.

#### INITIAL APPLICATION FOR REFUGEE STATUS DETERMINATION

8. The Appellant attended a Refugee Status Determination ("RSD") Interview on 11 December 2014. The Secretary summarised the material claims made at that Interview as follows:
  - *In August 2007 while at school, the Applicant, joined Chatra Shibir (CS), which is the student wing of Jel.*
  - *After the completion of his schooling, the Applicant continued to participate with Jel. During this time the Applicant was supported by his Father who was a leader of Jel in the local area. The Applicant's brother was a Jel activist.*
  - *The Applicant worked as a volunteer at the offices of Jel in Panchori 3 to 4 times a week. The Applicant would undertake administrative duties, canvassed votes and members, as well as assisted in organizing demonstrations and party meetings.*
  - *In 2009, the Awami League (AL) formed government. Not long after this, they began oppressing the supporters of the Jel.*
  - *On 2 August 2009, members of the AL raided the home of the Applicant's family. The Applicant's mother and younger siblings were beaten and the family members were threatened that they would be killed if they continued to support Jel. The Applicant's house was vandalised and their personal items destroyed. The Applicant's family was unable to seek the assistance of the police as they were controlled by the AL.*
  - *The Applicant's family decided to move as they felt vulnerable to attacks by the AL and they did not have the resources to ensure their safety. On 10 August 2009, the Applicant and his (sic) moved to another city. During this time the family moved regularly.*
  - *The Applicant amended his religious practices as he became fearful that he would be identified as a Jel supporter.*
  - *In November 2001, Jel leader Delwar Hussain Sayedi was arrested simply due to being a member of Jel. The Applicant felt that it was his responsibility to protest against the government. The Applicant participated in countless protests. The Applicant's life was threatened on many occasions.*
  - *On 5 May 2013, the Applicant attended a large peaceful protest against the Government in Dhaka city. Many people were killed and the Applicant was severely beaten by AL members and supporters. The Applicant spent three days in hospital before being released.*
  - *The Applicant's father was also beaten and injured. The Applicant's brother has been missing since the protest and it is feared he has been killed.*
  - *When the Applicant returned home, his father made arrangements for him to leave as he believed he would be identified and harmed by AL supporters.<sup>2</sup>*

<sup>2</sup> Book of Documents ("BD") 42.

9. The Secretary considered the Appellant not to be a credible witness. While the Secretary accepted that the Appellant was a low-level supporter of the Jel, she did not accept that:

- The Appellant was an actively engaged Jel supporter with a leadership role or with strong associations with the Jel leadership.
- The Appellant's father was in any leadership position within the Jel or in any position of influence, which could potentially be considered a threat by the ruling AL Party.
- The family of the Appellant was specifically targeted by AL members or police on account of their political involvement in August 2009.
- The Appellant attended the 5 May 2013 protests in Dhaka and was injured during an outbreak of violence.

10. In rejecting these claims advanced by the Appellant, the Secretary took into consideration that:

- The Appellant was unable to provide meaningful detail in relation to the policy or structure of the Jel, and his role within the party;<sup>3</sup>
- The Appellant was unable to provide any information on the history of the Jel, or current issues affecting the Jel, such as the prosecutions before the War Crimes Tribunal in Bangladesh;<sup>4</sup>
- In the Transfer Interview, the Appellant said his father and brother were members of the Chatra Shibir ("CS"). At the RSD Interview, the Appellant said his father was involved with the Jel, and his brother was involved with the CS;<sup>5</sup>
- The Appellant was unable to articulate the role his father played in the Jel;<sup>6</sup>
- The Appellant's testimony as to the visits by AL supporters to the family home during August 2009 was contradictory;<sup>7</sup>
- The Appellant's testimony on the 5 May 2013 protests was "nondescript, implausible and evasive". The Appellant was unable to name the hospital he was taken to after losing consciousness during the attack. He said that the attacker's faces were covered, but he knew they were from the AL because it was the AL members who were after him;<sup>8</sup>
- Country information indicates that those at the protest were not specifically targeted by the security forces;<sup>9</sup>
- There were discrepancies between the country information and Appellant's testimony in relation to the time the violence erupted, who participated in the violence, and the reason for the protest.<sup>10</sup>

11. The Secretary therefore was not satisfied on the basis of the Appellant's testimony, and available country information, that the Appellant possessed a

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<sup>3</sup> Ibid 43.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid 44.

<sup>8</sup> Ibid 44-45.

<sup>9</sup> Ibid 46.

<sup>10</sup> Ibid.

sufficient profile within the Jel to put him at risk of harm if returned to Bangladesh.<sup>11</sup> The Secretary did not consider that the Appellant was a refugee within the meaning of the Act.<sup>12</sup> For the same reasons, the Secretary did not accept that the Appellant would be subject to harm prohibited by the international treaties ratified by Nauru, and the Appellant was not owed complementary protection.

## REFUGEE STATUS REVIEW TRIBUNAL

12. The Appellant was notified of the result his RSD application on 15 December 2015, and applied to the Tribunal for review on 17 December 2015. On 15 April 2016, the Appellant was invited to appear before the Tribunal to give evidence and present arguments on 6 May 2016. The Appellant was advised that if he did not appear before the Tribunal at that time, the Tribunal may make a decision on the review without taking any further action to allow the Appellant to appeal.
13. On 6 May 2016, the Appellant did not attend the scheduled hearing. There was no application for an adjournment and the Tribunal was not given any further information as to why the Appellant failed to attend the hearing, or any request for the hearing to be rescheduled.<sup>13</sup> In those circumstances, pursuant to s 41 of the Act, the Tribunal decided the review without taking any further action.
14. The Tribunal considered the Appellant's previous testimony, and noted that his evidence at various stages was inconsistent, vague, and lacking in detail. As with the Secretary, the Tribunal expressed concern that the Appellant's account of the activities he undertook with the Jel was vague and lacking in detail,<sup>14</sup> the Appellant's testimony as to whether family members were beaten by the AL during August 2009 was contradictory,<sup>15</sup> and the Appellant was unable to accurately recall details of the protest in May 2013.<sup>16</sup>
15. In addition, the Tribunal was concerned that the Appellant had not given any clear evidence as to what year the Appellant joined a political party, and whether he joined the student wing of the Jel initially before transferring to the main party.<sup>17</sup> The Tribunal also noted that there was no suggestion that the Appellant's father had been harmed despite his apparently high profile position in the Jel.<sup>18</sup>
16. In light of the above, the Tribunal was unable to be satisfied that the Appellant was a member of Jel or that his father was a high profile member,<sup>19</sup> was threatened by AL supporters,<sup>20</sup> or attended the protest in May 2013.<sup>21</sup> The Tribunal was therefore not satisfied that there was a reasonable possibility of the

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<sup>11</sup> Ibid 47.

<sup>12</sup> Ibid 49.

<sup>13</sup> Ibid 100 at [9].

<sup>14</sup> Ibid 107 at [34].

<sup>15</sup> Ibid at [36].

<sup>16</sup> Ibid 108 at [37].

<sup>17</sup> Ibid 106-107 at [32]-[33].

<sup>18</sup> Ibid 107 at [35].

<sup>19</sup> Ibid.

<sup>20</sup> Ibid at [36].

<sup>21</sup> Ibid 108 at [37].

Appellant being harmed upon return to Bangladesh due to his political opinion as a supporter of Jel, or his father and/or brother's involvement with the Jel.<sup>22</sup>

17. In relation to the claimed fear of harm due to his Muslim faith, the Tribunal considered that there was no evidence to support the Appellant's claim that mosques in Bangladesh are regularly attacked, and was unable to be satisfied that there was a reasonable possibility of the Appellant being harmed on account of his religion.<sup>23</sup> Similarly, the Tribunal considered there was no detail to support the Appellant's claimed fear of harm on the basis of having left Bangladesh illegally or sought asylum abroad, and the Tribunal concluded that there was no reasonable possibility of the Appellant being harmed because of these reasons.<sup>24</sup>

18. The Tribunal affirmed the finding of the Secretary that the Appellant did not have a well-founded fear of persecution, and the Appellant was therefore not a refugee.<sup>25</sup> The Tribunal also affirmed the finding of the Secretary that the Appellant was not owed complementary protection.<sup>26</sup>

## ISSUES ON THE APPEAL

19. The Appellant's amended grounds of appeal are as follows:

1. *The Tribunal made a mistake on my case when it did not adjourn my hearing. This was unfair because:*
  - a. *Before the date of the hearing, I told my legal representative that I felt sick and could not go ahead with the hearing.*
  - b. *I did not attend my Tribunal hearing because I was feeling unwell and very stressed.*
  - c. *I asked my legal representative to have the date adjourned to a later time.*
  - d. *I just wanted an extension of time so that when I was better I could attend but the Tribunal did not pay any heed to my request.*
  - e. *Before they made the final decision, the Tribunal should have tried to speak to me again. Instead they made a decision without talking to me.*
2. *The Tribunal was unreasonable and biased against me and was not open to assessing my claims:*
  - a. *Whatever facts or statements I gave about my case, the Tribunal stated in its decision that it did not believe me. It was such that it seemed like they would not believe anything I said.*
  - b. *I was not given an opportunity to respond to the Tribunal about these issues. If they spoke to me in person they would be in a better position to assess if they should believe me or not.*
  - c. *For example, I said to Secretary that my brother was killed and the way they responded showed that they were not open to considering my claims. They questioned me about the details of his death – how he was killed, when he was killed, whether I had any documentary evidence to support this. If it was*

<sup>22</sup> Ibid at [38].

<sup>23</sup> Ibid at [39].

<sup>24</sup> Ibid 109 at [41].

<sup>25</sup> Ibid at [43].

<sup>26</sup> Ibid 110 at [50].

- safe to go and get evidence then that would mean that it was safe for me to return.
- d. The Tribunal applied an unrealistic standard or expectation for the amount of detail and dates that I should remember, which shows that the Tribunal was not open to assessing my claim but was trying to find ways to refuse my claims.
  - e. The Tribunal expected me to obtain documents to prove my claim, which was not possible in my situation. This shows that they were trying to find reasons to refuse my claim.

### Ground 1

20. The Appellant claims that it was unfair for the Tribunal not to adjourn his hearing. In essence this is a claim that he was denied natural justice.
21. The Tribunal invited the Appellant to appear before it by letter dated 15 April 2016. It set down 6 May 2016 as the hearing date. The 15 April 2016 letter was sent to the Appellant's legal representative. The last paragraph said as follows:
- "Please note that, if the applicant does not appear before the Tribunal on the date and time specified, the Tribunal may make a decision on the review without taking further action to allow the applicant to appear".*
22. The invitation to the Appellant to appear before the Tribunal was made in accordance with the Tribunal's obligation to do so under s 40(1) of the Act.
23. The Appellant's lawyers provided written submissions to the Tribunal by letter dated 4 May 2016. The Appellant failed to appear on 6 May 2016. There was no request by or on behalf of the Appellant for a rescheduled hearing at any time between 6 May 2016 and the Tribunal's decision on 3 July 2016.
24. Section 41 of the Act provides:
- (1) if the applicant:
    - a. is invited to appear before the Tribunal; and
    - b. does not appear before the Tribunal on the day on which, or at the time and place at which, the applicant is scheduled to appear;
- the Tribunal may make a decision on the review without taking further action to allow or enable the applicant to appear before it.*
25. It was open to the Tribunal to proceed to make a decision on the review without hearing from the Appellant. The review was required to be completed within 90 days of the Registrar receiving documents from the Secretary of the Department relevant to the review; see s 33 of the Act.
26. At [31] of the Tribunal's reasons, the Tribunal referred to statements made by the Appellant about his mental health and said it was unclear whether "he was indicating that he would have difficulty appearing before the Tribunal".

27. In the absence of any request for an adjournment or rescheduling of the hearing, accompanied by any medical evidence, the Tribunal was entitled to consider the review without hearing from the Appellant.

28. The Tribunal noted at [30] of its decision:-

*"As the applicant did not avail himself of the opportunity to attend a hearing before the Tribunal it was unable to explore many aspects of his claims with him. Many of his claims are lacking in details and are unsupported by other evidence".<sup>27</sup>*

29. The Tribunal considered all the claims made by him in his lawyer's submission and in his additional statement. It found that the Appellant does not have a well-founded fear of persecution and is not owed complementary protection.

30. At various stages in its decision the Tribunal refers to aspects of the Appellant's evidence as lacking in detail and vague. It also referred to some inconsistencies. It said that it would have explored such matters with him had he attended the hearing.

31. There is no evidence that the Appellant requested an adjournment of the hearing before the Tribunal or, at any stage, produced medical evidence as to why it was not possible for him to attend the hearing before the Tribunal.

32. Under s 41(1) of the Act, the Tribunal was entitled to make a decision on the review without taking further action to allow or enable the Appellant to appear before it. Had the Appellant put cogent grounds before the Tribunal for an adjournment, it would have been entitled under s 41(2) to reschedule the hearing, including delaying its decision, to enable the Appellant to appear before it.

33. It would have been open to the Appellant, even after the scheduled hearing date and before any decision had been made, to apply for a rescheduling of his appearance before the Tribunal. No such application was made.

34. In all the circumstances it cannot be said that the Tribunal committed any legal error in making its decision in the absence of an appearance by the Appellant. There was no breach of the rules of natural justice.

35. There is no evidence before the Court to support the Appellant's assertion that he told his legal representative he was sick and could not go ahead with the hearing. There is also no evidence to support his claim that he asked his legal representative to have the hearing adjourned. There is no material to show that any attempt was made to communicate with the Tribunal about a rescheduled hearing. There was no obligation on the Tribunal to attempt to contact the Appellant before making a decision on the review. Even if the Appellant's legal advisors acted improperly in not seeking an adjournment such action would not affect the entitlement of the Tribunal to proceed to make a decision. As the High Court of Australia said in *SZFDE v Minister for Immigration and Citizenship*<sup>28</sup> at 207:-

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<sup>27</sup> Ibid 106.

<sup>28</sup> (2007) 232 CLR 189.



*"There are sound reasons of policy why a person whose conduct before an administrative tribunal has been affected, to the detriment of that person, by bad or negligent advice or some other mishap should not be heard to complain that the detriment vitiates the decision made".*

36. There is also no evidence to support the Appellant's claim that he was so unwell as to not be able to appear at the hearing.

37. Ground 1 of the grounds of appeal lacks merit.

#### Ground 2

38. Ground 2 raises the issues of whether the Tribunal was unreasonable or biased. The Appellant asserts that the Tribunal did not believe him. The Tribunal did not say that the Appellant was not credible. At various stages of its decision it pointed out certain inconsistencies in his material and said that it would have liked to have explored certain aspects of his claims with him.

39. In my view, the decision of the Tribunal was not unreasonable. It does not bear the hallmark of a decision which is so unreasonable that no reasonable Tribunal could make it. The Tribunal proceeded to assess the Appellant's claims on the material before it. It was not required to accept those claims without exploring them with the Appellant.

40. There is no basis for the Appellant's claim that the Tribunal was biased against him. It is unclear whether the Appellant is asserting that there was a reasonable apprehension that the Tribunal was not open to persuasion on some matters before it or whether the Tribunal was actually biased against the Appellant. In any event, there is no evidence to support either contention. The bias allegation appears to stem from inconsistencies in the Appellant's account of when certain matters occurred. Pointing out inconsistencies is not an indication of bias. There is no basis for the Appellant's assertion that the Tribunal expected him to obtain documents to support his claim.

#### ORDERS

41. Having regard to the foregoing the Court will order as follows:

1. The decision of the Tribunal is affirmed pursuant to s 44(1)(a) of the *Refugees Convention Act 2012* (Nr).
2. There be no order as to costs.

*Shane Marshall*

Judge Shane Marshall  
20 February 2018

