



IN THE SUPREME COURT OF NAURU

AT YAREN

Case No. 35 of 2017

IN THE MATTER OF an appeal
against a decision of the Refugee
Status Review Tribunal TFN
T17/00379 brought pursuant to s 43
of the *Refugees Convention Act*
2012

BETWEEN

CRI 052

Appellant

AND

THE REPUBLIC

Respondent

Before: Judge Marshall

Appellant: Mr Nick Wood

Respondent: Ms Anna Mitchelmore

Date of Hearing: 7 May 2018

Date of Judgment: 27 November 2018

CATCHWORDS

APPEAL – whether the Tribunal failed to consider a claim made by the Appellant – whether the Tribunal failed to put adverse country information to the Appellant – whether the Tribunal failed to deal with significant evidence – APPEAL ALLOWED.

JUDGMENT

1. This matter is before the Court pursuant to s 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 s 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 first Refugee Status Review Tribunal (“the Tribunal”) delivered its decision on 31 August 2015 affirming the decision of the Secretary of the Department of Justice and Border Control (“the Secretary”) of 14 March 2015, that the Appellant is not recognised as a refugee under the 1951 Refugees Convention¹ 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 then lodged a Notice of Appeal with this Court. On 11 May 2017, the Court delivered its decision on the appeal in *CRI 052 v The Republic*.² Crulci J made orders quashing the decision of the Tribunal and remitting the matter for reconsideration according to law. On 20 July 2017, the Appellant received a written invitation to appear before the second Tribunal. On 31 July 2017, the Tribunal hearing proceeded, and on 27 October 2017, the second Tribunal again affirmed the decision of the Secretary.
5. The Appellant filed an initial Notice of Appeal on 7 November 2017, and an Amended Notice of Appeal on 30 April 2018.

BACKGROUND

¹1951 Refugee Convention and 1967 Protocol, also referred to as “the Refugees Convention” or “the Convention”.

² [2017] NRSC 33.

6. The Appellant is a male of Bengali ethnicity and Muslim religion from the Jamalpur District of Bangladesh. He worked as a welder after completing some secondary education. His parents and eight siblings remain in Bangladesh.
7. The Appellant claims a fear of harm arising from his membership of the Bangladesh Nationalist Party (“BNP”) and several incidents relating to his involvement in the BNP. The Appellant claims that, if returned to Bangladesh, he would be harmed by members of the BNP for refusing to participate in a murder plot. In addition, the Appellant claims a fear of harm on account of his membership of the particular social group of failed asylum seekers and someone who left Bangladesh illegally.
8. The Appellant left Bangladesh in May 2013, and travelled to Australia via Malaysia and Indonesia, arriving on Christmas Island on 14 December 2013. On 19 December 2013, the Appellant was transferred to Nauru.

INITIAL APPLICATION FOR REFUGEE STATUS DETERMINATION

9. The Appellant attended a Refugee Status Determination (“RSD”) Interview on 20 May 2014. The Secretary summarised the material claims presented by the Appellant at that Interview as follows:
 - *He joined the BNP when he was a child. He joined the BNP as his brother and father were involved with the BNP.*
 - *He continued to support the BNP as an adult.*
 - *He used to participate in a variety of meetings and gatherings held by the BNP. He was also involved in organising people to attend meetings and was also active in canvassing for the BNP during elections.*
 - *While in Bangladesh, he was physically harmed as a result of his political opinions and support of the BNP.*
 - *On Election Day in 2001, he was beaten by Bangladesh Awami League (AL) supporters after confronting them about their tactics in forcing BNP supporters to vote for the AL. During this incident, he was cut with a knife by an AL supporter.*
 - *In 2008, he was overheard discussing politics with a friend by an AL supporter (Mohammad Momin). Mohammad Minto, Mohammad Momin’s brother, beat him sometime in 2008 as a result of his brother overhearing the political discussion.*
 - *In May 2013, a number of BNP members from the Applicant’s village were planning to kill prominent AL leader Mohammad Minto. When he was informed of this, he told the BNP members that he did not want to have anything to do with it as what they were planning on doing was illegal and against the principles of the BNP. He was afraid of being implicated in a plot against a powerful member of the AL.*
 - *When he told the BNP members that he was not going to participate in killing Mohammad Minto, they threatened to kill him.*
 - *He spoke to his family the night he was informed of the plot and decided to leave Bangladesh.³*
10. Following the RSD Interview, the Appellant’s representatives notified the Secretary that the Appellant wished to draw the Secretary’s attention to events that occurred following the Interview. The Appellant said his youngest brother

³ Book of Documents (“BD”) 63.

informed him of those events during a telephone conversation. The Appellant was informed that Mohammad Minto was killed by a group of his friends on 20 June 2014, and one of his friends was arrested. This friend told the AL that Minto was killed on the Appellant's instructions. Following this, on 5 July 2014, the AL torched his family home and assaulted his parents. The Appellant instructed his representatives that he was suffering severe anxiety and insomnia since receiving this news.⁴

11. The Secretary, after considering the Appellant's evidence and relevant country information, accepted the Appellant's claims to be a supporter of the BNP and a member of the BNP student wing, Jatiyatabadi Chhatra Dal ("JCD"), since 2003; that he was beaten by AL supporters on Election Day in 2001; that he was beaten by Minto in 2008; and that he was asked to be involved in a plot to kill Minto.⁵ The Secretary considered that the Appellant was able to provide a high level of detail, and responses that were consistent with his written statements, in regards to the material elements of his claims.⁶ Available country information also supported that there is a long history of conflict between the AL and BNP in Bangladesh,⁷ including between the respective student wings of the parties.⁸ However, the Secretary did not accept that the Appellant was told that he would be killed if he did not participate in the plot to kill Minto, noting that the Appellant was good friends with those planning the killing, those planning the killing allowed the Appellant to use the bathroom unattended after informing him of the plot, and the Appellant was able to stay at his family home for one night and day after being informed of the plot without his friends searching for him.⁹
12. However, in view of the country information that it was the leaders and influential activists who were targeted by the authorities, and not "rank and file members", the Secretary found that the Appellant did not have a profile that would result in him being targeted by the AL. The Secretary also noted that the two occasions on which the Appellant was assaulted appeared to be isolated incidents.¹⁰ Given there was no reasonable possibility of the Appellant facing harm upon return, the Appellant had no well-founded fear of persecution, and was not granted refugee status.¹¹ Upon the basis of the same factual findings, the Appellant was also not granted complementary protection.¹²

FIRST REVIEW BY REFUGEE STATUS REVIEW TRIBUNAL

13. On 31 March 2015, the Appellant applied for review by the Tribunal, and the Appellant was invited to give oral evidence at a hearing on 12 June 2015. The

⁴ Ibid 57.

⁵ Ibid 67.

⁶ Ibid 64 – 66.

⁷ Ibid 65.

⁸ Ibid 66.

⁹ Ibid 66 – 67.

¹⁰ Ibid 70.

¹¹ Ibid 71.

¹² Ibid 72.

Appellant was advised through his representative that if he did not attend the hearing and an adjournment was not granted, the Tribunal may decide the review without further notice. The Appellant failed to appear at the scheduled hearing. The Tribunal therefore proceeded to decide the Appellant's review on the basis of the material before it. This material included a submissions dated 8 June 2015 and a statement dated 9 May 2015, in which the Appellant denied that he said his friends allowed him to use the bathroom unattended after being told of the plot to kill Minto,¹³ and said his friends did, in fact, search for him at his family home and abused his parents.¹⁴

14. The first Tribunal considered that the Appellant's material claims were inconsistent and unsubstantiated. In particular, the Tribunal noted the lack of evidence on the following matters:

- *When the applicant left school and his employment history. Whether his education and employment was in his district or elsewhere and how this impacted on his role as an active BNP member. When he was president of the JCD and his role within the student wing;*
- *Details of the incidents in 2001 and 2008 when he was beaten by AL supporters and why the applicant was targeted at such a young age;*
- *Details of the plot to kill Minto, in particular, why the applicant's friends would have asked him to be involved if he was not involved in the planning and he did not want to participate; why his long standing friends would threaten to kill him after he refused to participate;*
- *Details of the meeting with his friends and why he gave different versions of where it took place and how he escaped – why they would allow him to escape by letting him to go to the toilet unescorted or not pursue him when he fled from the school yard;*
- *Why he gave different versions of whether the group searched for him after he escaped at his family home; and how he avoided being detected when they searched his family home if he was hiding under his bed;*
- *Details of the alleged killing of Minto, the arrest of his friend and court proceedings – if a warrant has been issued for the applicant's arrest;*
- *Why the police would accept that he was the organiser of the killing of Minto;*
- *Details of the attack on his family home and why the AL would have destroyed his family home in search of the applicant more than a year after he had departed;*
- *The circumstances – such as timing and funding – of the applicant's departure from Bangladesh; and*
- *What harm he fears if he returns to Bangladesh, including the reason he fears for his life, and whether this relates to his own locality only, or all of Bangladesh.¹⁵*

15. The Tribunal was not satisfied the Appellant would face harm amounting to persecution for a Convention reason upon return to Bangladesh, and was therefore not satisfied that the Appellant was a refugee.¹⁶ The Tribunal also said that its lack of satisfaction about the Appellant's material claims affected its assessment of the Appellant's eligibility for complementary protection, and, for the same reasons the Tribunal rejected the Appellant's Convention claims, it also rejected the Appellant's claims to complementary protection.¹⁷

¹³ Ibid 102 at [8].

¹⁴ Ibid at [12].

¹⁵ Ibid 116 – 117.

¹⁶ Ibid 117.

¹⁷ Ibid 118 at [22].

FIRST APPEAL TO THIS COURT

16. The Appellant's first appeal to this Court raised two grounds of appeal: firstly, that the Tribunal denied the Appellant procedural fairness by refusing an adjournment of the hearing in circumstances that were legally unreasonable; secondly, that the Tribunal's finding that a number of claims were unsubstantiated was incorrect as those claims were supported by the Appellant's evidence.
17. Crulci J recited key authorities relating to legal unreasonableness, and considered the factual circumstances of the case, including that it was the first occasion the Appellant had a hearing scheduled before the Tribunal, it was his first request for an adjournment of the hearing, the Act provides for rescheduling to enable an Appellant to appear before the Tribunal,¹⁸ there were further hearings scheduled in two-months time,¹⁹ and the decision to refuse an adjournment was fatal to the success of the Appellant's review application.²⁰ Her Honour found that in those circumstances, the refusal to grant an adjournment was legally unreasonable, and the Tribunal disclosed no evident and intelligible justification for not adjourning the hearing.²¹ Her Honour did not proceed to consider the second ground of appeal, having upheld the first ground.
18. Her Honour made orders quashing the decision of the first Tribunal and remitting the matter to the second Tribunal under s 44(1)(b) of the Act for reconsideration according to law.²²

SECOND REVIEW BY REFUGEE STATUS REVIEW TRIBUNAL

19. On 31 July 2017, the Appellant appeared before the second Tribunal. In the Appellant's statement dated 28 July 2017, the Appellant added further details about his education, and reasserted his core claims regarding the assault on Election Day in 2001, the assault in 2008 after AL members overheard him and his cousin discussing BNP politics, the plot to kill Minto, and the consequences of this plot for his family. He also added new claims about his younger brother being attacked in Dhaka in May 2017, and his older brother being kidnapped from the family home in July 2017. At the Tribunal hearing, the Appellant further added that the Bangladeshi authorities would impute him with the political opinion of a Jamaat-e-Islami ("Jel") supporter because he had been in Malaysia, and may have associated with Jel members there.
20. On the basis of inconsistent evidence from the Appellant as to when he joined the BNP,²³ the Tribunal rejected that the Appellant held any formal membership of the BNP, but accepted that he may have been a supporter.²⁴ The Tribunal

¹⁸ *CRI 052* at [55].

¹⁹ *Ibid* at [56].

²⁰ *Ibid* at [57].

²¹ *Ibid* at [58].

²² *Ibid* at [60].

²³ *BD 338* at [24].

²⁴ *Ibid* at [25].

also rejected that events on Election Day in 2001 unfolded in the way claimed by the Appellant, with the Appellant being chased, beaten and stabbed by AL supporters, finding it difficult to accept that the supporters would have so seriously assaulted a child of 12 years of age for questioning the electoral procedures, and officials would not have intervened during the first part of the altercation at least.²⁵ The Tribunal also rejected that the assault in 2008 by Minto occurred in the way claimed by the Appellant, leading to him being knocked unconscious, given his earlier evidence that it was a “scuffle in a public tea room”, the fact no-one intervened, and the Appellant did not sustain any head injuries.²⁶ In regards to the plot of May 2013, the Tribunal noted the escalation in the Appellant’s claims concerning the threats from a young group of men whom the Appellant said were his best friends,²⁷ and also rejected these claims.²⁸ The Tribunal further rejected that the plot was carried out, and had the extremely adverse effects on the Appellant as claimed, noting in particular that there was no evidence that Minto was shot, despite being an important AL figure.²⁹ Finally, the Tribunal rejected that any harm to the Appellant’s brothers since the killing, if there was any such harm, was related to any animosity towards the Appellant from Minto’s family.³⁰

21. Having rejected that the events detailed in the Appellant’s material claims unfolded in the way claimed by the Appellant, but accepting that some minor harm may have befallen the Appellant during election periods in 2001 and 2008, the Tribunal considered the risk of harm to the Appellant as a result of general inter-party violence.³¹ The Tribunal found that the risk of the Appellant coming to harm amounting to persecution because of his political opinion was remote.³² It was also implausible that the Appellant would be targeted on the basis of possibly associating with some Jel members in Malaysia.³³
22. The Tribunal was also not satisfied, on the basis of relevant country information, that the Appellant faces a real possibility of persecution on account of being a member of the particular social group of failed asylum seekers or persons who left Bangladesh illegally.³⁴ The Appellant’s profile and political opinions were also not such that he would be exposed to a reasonable possibility of harm of a kind that would breach Nauru’s international obligations should he be returned to Bangladesh.³⁵ The Tribunal therefore found that the Appellant did not qualify for refugee status or complementary protection.³⁶
23. For completeness, the Tribunal also considered the Appellant’s claim to be suffering from poor mental health, and, while it accepted that the Appellant is

²⁵ Ibid 339 at [30].

²⁶ Ibid 341 at [35] – BD 341 at [36].

²⁷ Ibid 342 at [43].

²⁸ Ibid 343 at [45].

²⁹ Ibid 345 at [53]; BD 346 at [54].

³⁰ Ibid 347 at [58] – [59].

³¹ Ibid at [61].

³² Ibid 348 at [61].

³³ Ibid at [62].

³⁴ Ibid 349 at [69].

³⁵ Ibid 351 at [75].

³⁶ Ibid 352 at [81].

experiencing mental health difficulties, this did not impede his ability to give evidence and participate in the RSD process. The Appellant would not face a real possibility of persecutory harm or harm that would otherwise engage Nauru's complementary protection obligations on account of his mental state.³⁷

SECOND APPEAL TO THIS COURT

24. The Appellant's Amended Notice of Appeal reads as follows:

1. *The Tribunal failed to: (a) consider and determine the appellant's claim to the effect that he would not "get the mental health support [he] need[s] should [he] be forced to return to Bangladesh", and (b) consider and determine whether, on that basis, the return or expulsion of the appellant to Bangladesh would breach Nauru's international obligations.*

Particulars

- a. *The appellant claimed that he suffered from certain mental health conditions.*
 - b. *Further, the appellant claimed that he would not get the mental health support that he would need if he was forced to return to Bangladesh.*
 - c. *The Tribunal failed to deal with those claims. It did not make a finding as to whether, as he had claimed, he would get the health care that he needed in Bangladesh to manage his health conditions. And it did not make a finding as to whether, on the basis, the removal or expulsion of the appellant from Nauru would breach Nauru's international obligations.*
 - d. *Alternatively, insofar as the Tribunal dealt with and rejected those claims (which is denied), it failed to provide adequate reasons for so doing to discharge its duty under section 34(4) of the Act.*
2. *The Tribunal denied the appellant natural justice by failing to bring to his attention certain credible, relevant and significant country information regarding the incidence of and risks arising from political violence in Bangladesh, and to invite his consideration and comment on it.*

Particulars

- a. *The information was that "[Awami League], [Bangladesh Nationalist Party] and Jamaat members are subjected to a low level of inter-party violence but notes that, despite an increase in inter-party violence since 2013, the number of casualties remains relatively low in proportion to the size of these parties... [M]embers of the BNP and Jamaat student and labour wings face a low risk of inter-party violence".*
 - b. *The Tribunal referred to, and placed weight on that information in its reasons at [61]. It did not bring the information to the appellant's attention, or invite his consideration and comment on it.*
3. *The Tribunal failed to deal with significant or important evidence given by the appellant as to the frequency and number and nature of incidents of violence that he had suffered in Bangladesh.*

Particulars

³⁷ Ibid 351 at [77].

- a. *The appellant gave evidence to the effect that he had suffered violence at the hands of Awami League supporters on many occasions, not limited to two occasions in 2001 and 2008 that he discussed in some detail. In particular, the appellant gave evidence that he had been subjected to violence from a man called Mohammad Momin on many occasions.*
 - b. *The Tribunal did not consider the appellant's evidence of violence beyond the 2001 and 2008 incidents.*
 - c. *The appellant's evidence as to the frequency and number of incidents of violence that he had suffered was significant or important to his claims. That is especially so in relation to his evidence that he had frequently been subjected to violence from Momin or his associates. It was, in particular, relevant to his claim to have been (and to fear being) targeted in the future.*
25. The Appellant relies on three grounds of appeal from the decision of the Tribunal. Counsel for the Appellant has summarised those grounds as follows:

“Ground 1: The Tribunal failed to deal with certain claims made by the Appellant relating to his mental health, and the inadequate treatment he would get in Bangladesh.

Ground 2: The Tribunal denied the Appellant natural justice, by failing to put certain adverse country information to him as to the incidence and risk of harm from political violence in Bangladesh.

Ground 3: The Tribunal failed to deal with significant or important evidence given by the Appellant as to the frequency and number and nature of incidents of violence that he had suffered in Bangladesh.”

Ground 1

26. Ground 1 of the Amended Notice of Appeal asserts that the Tribunal failed to consider and determine the Appellant's claim to the effect that he would not get the mental health support he needs should he be forced to return to Bangladesh. Therefore it is contended that the Tribunal failed to consider whether the Appellant's return to Bangladesh would breach Nauru's international obligations.
27. The issue of the Appellant's mental health was first raised by his solicitor in a post-interview submission to the Secretary dated 10 August 2014. The context was that he had recently learned that persons from the Awami League had torched his family home and assaulted his parents. He had been suffering from severe anxiety and insomnia since hearing that news.
28. The Appellant next referred to his mental health in a statement to the Tribunal dated 28 July 2017. The statement referred to “ongoing and serious mental health issues” arising from his time in Nauru.³⁸ He referred to having been diagnosed with a depressive disorder as well as an adjustment disorder. He said that he did not believe he would get the mental health support he needs if forced to return to Bangladesh.

³⁸ Ibid 136 at [13].

29. The representative of the Appellant made submissions to the Tribunal which referred to the Appellant's mental health issues and contended they would "affect his capacity to live effectively in Bangladesh".³⁹ His mental health condition was also relied on to support a submission that it would be difficult for him to relocate in Bangladesh.
30. In the hearing the Tribunal asked whether there was "medical information" to support the Appellant's claims to be suffering from mental health issues. The answer was: "That will be forthcoming".⁴⁰
31. In post-hearing written submissions dated 20 August 2017 the Appellant's representative addressed "Mental Health Concerns" within a section entitled "Internal Flight or Relocation Alternative".⁴¹ The submission was made that the Appellant's mental health would significantly limit his capacity to relocate within Bangladesh and that he would be unable to receive the mental health support which he requires in Bangladesh. That later submission was a broader one not confined to the issue of relocation. Further, the section dealing with "mental health concerns" also dealt with broader issues such as a lack of basic housing and hygiene.⁴²
32. On 5 September 2017, the Appellant's solicitors provided the Tribunal with further post-hearing submissions. The submissions contained a section dealing with "Mental Health Concerns".⁴³ They referred to the Appellant suffering from "a number of mental health concerns which have arisen during his time in detention in Nauru".⁴⁴ Relevant health records were attached. The mental health records were said to support the Appellant's claim to "face significant barriers in relocation to Bangladesh".⁴⁵
33. Also on 5 September 2017, the Appellant provided a further statement referring to his father's passing, saying that it had added to his stress and anxiety.⁴⁶
34. In the context of the Appellant not having a national identity card his solicitors made further submissions on 4 October 2017. It was submitted that if the Appellant applied for a card, relocation would become unreasonable as employers loyal to the AL can thereby attain information about prospective employees. The submission concluded by saying that an individual with mental health concerns would find it difficult to navigate the complex process of attaining a card and that mental health concerns would amplify the Appellant's limited capacity "to evade being further identified as a supporter of the BNP".⁴⁷
35. Further, during the review process, the Appellant raised concerns that his mental health may affect his ability to make submissions and give evidence.

³⁹ Ibid 245 at ln 12.

⁴⁰ Ibid 247 at ln 39.

⁴¹ Ibid 274 at [105] – [106].

⁴² Ibid 275 at [110].

⁴³ Ibid 297 at [2] – BD 298 at [4].

⁴⁴ Ibid at [2].

⁴⁵ Ibid at [3].

⁴⁶ Ibid 319 at [7] – [8].

⁴⁷ Ibid 332 (h).

36. At [14] of its reasons for decision the Tribunal noted that the Appellant said “he would not get the help he needs if he were returned to Bangladesh” after referring to his mental health issues. However, the Tribunal did not further address that issue.

37. At [77] of its reasons, the Tribunal dealt with the Appellant’s mental health. It said:

“It has been submitted that the applicant is suffering from poor mental health and that this may have an impact on his ability to relocate to another part of Bangladesh. It has also been submitted that the applicant’s father has recently died so he is now without his father’s support. The Tribunal accepts that the applicant has experienced some poor mental health as set out in the IHMS notes. However, the Tribunal is satisfied the applicant was able to give evidence and fully participate in the hearing as well as in the pre- and post-hearing statements. The Tribunal is satisfied the applicant does not face a real possibility of suffering persecution or harm giving rise to a need for complementary protection in his home area, so the issue of relocation does not arise. The Tribunal acknowledges that the applicant may miss the support of his father in Bangladesh but notes he has his mother and brothers in his home area.”

38. The Tribunal there considered the Appellant’s mental health by reference to his ability to participate in the review process and in the context of his claim that it would be difficult for him to relocate to another part of Bangladesh. The Tribunal did not deal with his claim that he would not receive the assistance he needs for his mental health if returned to Bangladesh. Counsel for the Appellant contends the Appellant raised a concern about his capacity to obtain appropriate medical care anywhere in Bangladesh.

39. Counsel for the Republic submits that the Appellant’s belief about the level of mental health support he would receive in Bangladesh did not constitute an independent claim in support of his application. Counsel notes that it was not relied upon to ground an entitlement to complementary protection as to invoke the protection of other international instruments.

40. At [29] of her written submissions, counsel for the Republic said:

“Properly understood, the appellant’s statements and evidence to the Tribunal, and the material his representatives provided, indicate that he relied on his mental health by way of answer to his difficulties at the hearing and any consequential credibility concerns; and independently to support the submission that it was not reasonably practicable for him to relocate within Bangladesh. The Tribunal’s detailed reasons indicate that it so understood the appellant’s evidence and submissions in relation to his mental health and it in both of those contexts to the extent that it needed to do so (BD 351 [77]). No error has been established”.

41. For the Appellant to succeed on this ground, it must be shown that the Tribunal failed to make a finding on “a substantial, clearly articulated argument relying on established facts”; see *Dranichnikov v Minister for Immigration and Multicultural*

and Indigenous Affairs.⁴⁸ Perhaps in the context of the Tribunal's duty the word "claims" should be substituted for "facts".

42. The Appellant's representatives did articulate an argument that the Appellant would not receive the assistance he needs for his mental health concerns if returned to Bangladesh. The claim was made to the Tribunal that his mental health issues would affect his capacity to live effectively in Bangladesh. The same claim was made in the submissions dated 20 August 2017 after dealing with the issue of relocation. The claim may have been better articulated in a section dealing with it clearly as a stand alone claim and it would have been preferable to submit that the claim engaged Nauru's complementary protection obligations. However, the claim regarding his capacity to obtain appropriate medical care for his mental health condition was made. The Tribunal did not deal with that claim. There was no finding concerning the Appellant's mental health needs or whether he would obtain the health care he required if returned to Bangladesh. There was no finding as to whether the removal of the Appellant to Bangladesh would breach Nauru's international obligations on account of the Appellant's mental health condition.
43. In light of the foregoing, the Appellant succeeds on ground 1 and the matter should be remitted to the Tribunal on that basis.

Ground 2

44. Under ground 2 of the appeal, the Appellant submits that the Tribunal denied him natural justice by failing to put certain adverse country information to him about the incidence and risk of harm from political violence in Bangladesh.
45. The Appellant claimed to fear harm from AL supporters on the basis of his membership of or support of the BNP. The Tribunal dealt with this claim at [61] of its reasons. It relied on country information from the Australian Department of Foreign Affairs and Trade ("DFAT") to reject that claim.
46. The DFAT material referred to a low level of inter-party violence and noted that despite an increase since 2013, the number of casualties remained relatively low in proportion to the size of the parties. The Appellant claims that the Tribunal did not put this information to him.
47. In written submissions to the Tribunal, the Appellant twice referred to the DFAT Country Information Report, 5 July 2016. It was this document mentioned the matters referred to in the preceding paragraph. However, the Appellant's solicitors relied on the Report in relation to the issues of unlawful departure from Bangladesh and the obtaining of an identity card.
48. In circumstances where the Appellant's representative puts excerpts from country information to the Tribunal the representative must be taken to be aware of all of the information contained in the Report. That is the effect of the

⁴⁸ (2003) 77 ALJR 108 at [24].

reasoning of the High Court of Australia in *WET 044 v Republic of Nauru* (“*WET 044*”) at [26].⁴⁹

49. To the extent that *DWN 084 v Republic of Nauru*⁵⁰ at [48] to [49] decides to the contrary of *WET 044*, the High Court decision should be followed as at the time it was a higher judgment in the judicial hierarchy.
50. This ground of appeal fails. The Appellant’s counsel recognised the difficulties he faced given the judgment in *WET 044* and didn’t address the matter beyond his written submissions.

Ground 3

51. The Appellant submits that the Tribunal failed to deal with significant evidence given by him concerning the frequency and number and nature of the incidents of violence he had suffered in Bangladesh.
52. The Appellant claimed to have suffered from instances of physical violence from BNP supporters throughout his life. In his statement dated 28 July 2017 he referred to two examples; a 2001 and a 2008 incident. At the hearing, on 31 July 2017, he said he had been assaulted many times.
53. The Appellant’s counsel contends that the Tribunal was under the mistaken understanding that the Appellant had only claimed to suffer violence arising out of the 2001 and 2008 incidents.
54. At [19] of the Tribunal’s reasons after having returned to the 2001 and 2008 incidents, the Tribunal said that the Appellant made no reference to any further incidents until a threat made to him in 2013. The Appellant’s counsel contends that evidence about assaults from a man called “Momin” and his associates were not considered by the Tribunal.
55. At [38] of his outline of submissions, counsel for the Appellant said:

“By not considering the appellant’s claims about being assaulted many times, the Tribunal circumscribed the past harm the appellant claimed to have suffered in Bangladesh, which vitiated the Tribunal’s assessment of his risk of future harm”.

56. Counsel for the Republic notes that the Appellant’s post-hearing submissions of 20 August 2017 identified only two assaults, one occurring in 2001 and one in 2008. The focus on those assaults was to give significant examples of the harm suffered.
57. Counsel for the Republic observes that in the 28 July 2017 statement there is a reference to a number of other smaller incidents where the Appellant was assaulted. Counsel referred to evidence from the Appellant at the Tribunal in which a different emphasis was placed on the assaults which had occurred many

⁴⁹ [2018] HCA 14.

⁵⁰ [2017] NRSC 84.

times. This is consistent with the written submissions of 28 July 2017 which refer to “smaller run-ins” and “scuffles and verbal assaults”.⁵¹

58. The Tribunal decided that the two primary incidents (in 2001 and 2008) relied on by the Appellant were incidents of violence in the context of elections and that the Appellant was not directly targeted in either case and the injuries sustained were not as significant as claimed.
59. The Tribunal referred to country information about BNP members being subject to low level harm and found that there was a low risk that the Appellant might suffer harm in inter-party violence in the future. In those circumstances, I agree with counsel for the Republic that the Tribunal did not fail to consider the evidence about assaults other than those in 2001 and 2008. Ground 3 is rejected.

ORDERS

60. The Court will make the following orders:

1. The matter is remitted to the Tribunal for reconsideration.
2. The decision of the Tribunal is quashed.

Judge Shane Marshall
Dated 27th November 2018

⁵¹ BD 139 [54].