IN THE SUPREME COURT OF NAURU

AT YAREN

Appeal No. 20 of 2025

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

BETWEEN:

AT25

Appellant

AND:

REPUBLIC OF NAURU

Respondent

Before: Brady J

Dates of Hearing: 11 August 2025

Date of Judgment: 15 August 2025

CITATION: *AT25 v Republic of Nauru*

CATCHWORDS:

APPEAL - *Refugees - Refugee Status Review Tribunal - Whether the Tribunal failed to afford procedural fairness to Appellant - Whether Tribunal failed to direct Appellant's attention to a relevant matter - The Tribunal did not breach the requirements of procedural fairness - Appeal dismissed*

LEGISLATION:

Refugees Convention Act 2012 (Nr), ss 43, 44.

CASES CITED:

Nguyen v Minister for Immigration, Citizenship and Multicultural Affairs [2023] FCA 425 at [24]; *SZHKA v Minister for Immigration and Citizenship* [2008] 172 FCR 1 at [7]; *SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs (2006)* 228 CLR 152 at [47]; *Browne v Dunn* (1893) 6 R 67

APPEARANCES:

Counsel for Appellant:	Mr A Aleksov (instructed by Craddock Murray Neumann)
Counsel for Respondent:	Mr R O'Shannessy (instructed by Republic of Nauru)

JUDGMENT

INTRODUCTION

1. The Appellant is a national of Bangladesh. He arrived in Australia and on 18 February 2024 he was transferred to Nauru pursuant to the memorandum of understanding between the governments of Nauru and Australia. On 4 March 2024, the Appellant made an application for Refugee Status Determination (**RSD**).

2. The Appellant claims to be a supporter of the Bangladesh National Party (**BNP**). He claims to have been attacked by supporters of the Awami League (**AL**) when he lived in Bangladesh. The Appellant also alleges that he attended a BNP rally in December 2023 and was attacked and threatened by members of the AL after that rally.

3. Pursuant to s 43 of *Refugees Convention Act* 2012 (Nr) (**the Act**), the Appellant appeals from a decision of the Refugee Status Review Tribunal (**Tribunal**) dated 27 March 2025 (**Tribunal Decision**). The Tribunal affirmed a decision of the Acting

Secretary of the Department of Multicultural Affairs (**Secretary**) dated 27 September 2024 (**Secretary's Decision**) not to recognise the Appellant as a refugee and to find that the Appellant is not owed complementary protection under the Act.

4. By s 43 (1) of the Act, the Appellant may appeal to this Court on a point of law.

5. By s 44 (1) of this Act, this Court may make either of the two following orders:

   (a) an order affirming the Tribunal Decision; or

   (b) an order remitting the matter to the Tribunal for consideration in accordance with any directions of this Court.

GROUND OF APPEAL

6. In his amended Notice of Appeal, the Appellant advances a single ground of appeal in these terms:

   > The finding at Reasons [33] was made following an unfair procedure.

7. The Appellant asks this Court to make orders:

   (a) pursuant to s 44 (1)(b) of the Act, that the matter be remitted to the Tribunal for reconsideration according to law; and

   (b) pursuant to s 44 (2)(b) of the Act, the Tribunal Decision be quashed.

FACTUAL BACKGROUND

8. The Appellant makes the following claims in support of his application to be recognised as a refugee.

9. The Appellant claims to fear persecution in Bangladesh due to his political opinion as a BNP supporter. He alleges that he has been a supporter of the BNP from an early age as his family has a long history of involvement with the party.

10. He alleges that in 2022 he was attending a BNP procession and was at the forefront of the march where members of the AL would have recognised him due to his visible position. Three days after the procession, whilst he was on his way home from work, he was ambushed by AL members. They threatened him and demanded that he leave the BNP and join their party.

11. The Appellant refused this demand which led to an argument. They beat the Appellant with a hockey stick, leaving scars on his head. He contends that he was targeted solely because of his support for the BNP and his participation in its events.

12. In December 2023, he says that he attended another BNP rally addressed by a former BNP candidate. Again, he says that he was easily identifiable given his prominent position at the rally.

13. As he was returning home from the rally, the Appellant alleges that he was attacked again by AL members. He says that the targeting was not random as his face was familiar to them.

14. Shortly after this second attack, the Appellant left Bangladesh fearing for his life.

15. Even after his departure from Bangladesh, the Appellant contends that threats and violence against his family have continued. He says that in April 2024, AL members came to his house looking for him. When they could not find him, they attacked his brother. The attackers also caused damage to his house.

16. The Appellant contends that this ongoing pattern of harassment and violence underscores the dangerous environment that BNP supporters face in Bangladesh.

PROCEDURAL HISTORY

17. The Appellant made his initial RSD application on 4 March 2024. The Secretary found that the Appellant was not recognised as a refugee and was not owed complementary protection on 27 September 2024.

18. The Appellant applied to the Tribunal for review of the Secretary's Decision on 1 October 2024.

19. On 17 March 2025, the Appellant appeared before the Tribunal to give evidence and present arguments. The Tribunal Decision was made on 27 March 2025.

20. An appeal to this Court was filed dated 1 April 2025. An amended Notice of Appeal was filed dated 10 July 2025. I heard argument in this appeal on 11 August 2025.

TRIBUNAL DECISION

21. The Tribunal commenced its consideration of the claims and evidence under the heading "The Substantive Issue" at [29] of the Tribunal Decision. At [30], the Tribunal notes that in his RSD application and RSD interview, the Appellant stated that he could not return to Bangladesh because he was a BNP supporter. In a subsequent statement dated 14 March 2025, the Appellant suggested he attended around 18 protests and numerous BNP events where he would distribute leaflets when requested by the BNP leadership.

22. However, the Tribunal notes that at the hearing before the Tribunal, the Appellant stated that he was a BNP member, even though in his RSD statement said that he was not a member of a political party. He confirmed that statement in his RSD interview.

23. The Tribunal went on to say at [33] and [34]:

> [33] The [Appellant] was also unable to explain at RSD interview and hearing why, if he was a BNP supporter, he was at a BNP meeting where upcoming BNP senior appointments were being discussed or why the AL allegedly forced him to vote for them in a one candidate chairman's election held in 2015. (Although acknowledging when his account was queried, he said that there were two candidates discussed below).

[34] While the Tribunal accepts the [Appellant] claimed at hearing he was a BNP member and therefore presumably eligible to attend meetings where BNP appointments were discussed, the Tribunal finds his alleged membership is of recent invention given his inability to discuss membership requirements and his previous evidence he was only a BNP supporter.

24. This issue was addressed in the hearing before the Tribunal. At AB 112 commencing at line 9, the following passage appears:

Ms Cranston: So did you attend any BNP meetings?

The Interpreter: Yeah. Till today, like, I would say, like, around, like, 18 meetings I have participated.

Ms Cranston: And what was discussed at those meetings?

The Interpreter: Okay. So how can bring them - bring affordability of the general public, constructing a very good party and well - being of our society, our community. That type of discussion took place in those meetings.

Ms Cranston: Did you have any of - were there any other kind of discussions taking place during those meetings that you attended?

The Interpreter: Lots of other issues too.

Ms Cranston: Like what?

The Interpreter: A lot of political issues and subjects.

Ms Cranston: I think the RSD officer, when they talked to you, asked you a question about the meetings. And I think your answer was that they talked about new membership and also senior members and possible senior posts, the appointment of possible senior persons.

The Interpreter: Yeah. You are right. That type of discussions were taking place in the discussions, like especially for the new members, why can - we can accommodate the new members or something like that.

Ms Cranston: But it does - I guess, the - if you are not a member, a BNP member, it would seem strange that you were at a meeting where possible senior positions were being discussed.

The Interpreter: Yeah. Probably, they might have some serious or some detailed discussions among those, like - in the - among them, senior members. But whenever we have been asked to join, and we just go and join."

THE APPELLANT'S ARGUMENTS

25. Mr Aleksov for the Appellant submitted that the Appellant never had his attention directed to the question which the Tribunal found that he was "unable" to answer at paragraph [33] of the Tribunal Decision. The Tribunal found at [33] that the Appellant was "unable to explain at RSD interview and [Tribunal] hearing why, if he was a BNP supporter, he was at a BNP meeting where upcoming BNP senior appointments were being discussed…"

26. The Appellant's criticism is that whilst the Appellant was told in that hearing that it might *seem strange* for him to be at that meeting, he did not have his attention directly drawn to the point made in paragraph [33] of the Tribunal Decision.

27. The Appellant relied on the decision in *Nguyen v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] FCA 425. At [24] and following, Button J considered the requirements of procedural fairness in general terms. Her Honour noted at [26] that the Tribunal in that case was required to invite the Applicant to appear before the Tribunal to give evidence and present arguments relating to the *issues arising* in relation to the decision under review. Her Honour noted that this obligation has long-formed part of the review scheme set out in the Act and does not operate on a "once and for all" basis. If new issues arise after a Tribunal hearing, a further hearing must be convened.

28. At [27] her Honour quoted from the decision of Gray J in ***SZHKA*** *v Minister for Immigration and Citizenship* [2008] 172 FCR 1. At [7] of that decision, Gray J said:

> First, the issues arising are not limited to the question whether the applicant is entitled to a protection visa, but are more particular than that. Second, initially the issues will be defined by the reasons given by the person who made the decision under review, but *the issues may, and often will, undergo changes in the course of the Tribunal's conduct of the review of that decision.* Third, because the Tribunal starts from the position of being unpersuaded by the material already before it, *the hearing will inevitably explore the reasons why the Tribunal might not be persuaded by that material; the Tribunal will not perform its function adequately if it does not provide the applicant with the opportunity to satisfy the Tribunal's specific reservations about the applicant's case. Thus, to some extent at least, the issues arising in relation to the decision under review will depend upon the view that the ultimate decisionmaker takes* about the material before the Tribunal, and will therefore be shaped by that person's thought processes. This is not to say that the Tribunal member must expose all of his or her thought processes to scrutiny by the applicant, as part of the hearing. The High Court recognised this in ***SZBEL*** *v Minister for Immigration and Multicultural and Indigenous Affairs* [2006] 228 CLR 152 at [38]-[39]. The line between exposing every aspect of the reasoning process and making known to the applicant the issues that the Tribunal member sees as arising may not be easy to recognise in all circumstances, but it does exist.

29. In taking me to the extract of the transcript of the hearing before the Tribunal as set out above, Mr Aleksov described the question asked of the Appellant by the Tribunal member in these terms: "If you are not a BNP member, it would seem strange that

you were at a meeting where possible senior positions were being discussed". He described this statement as being nothing more than an oblique comment rather than properly a question. As Mr Aleksov described it, it was little more than a "thought bubble".

30. The Appellant submits that it was unfair to him that he was not given a reasonable opportunity to squarely address the issue raised in paragraph 33 of the Tribunal Decision.

31. When I asked Mr Aleksov whether the Tribunal member's statement that "it would seem strange" that he was present at such a meeting suggests a degree of scepticism about this issue, Mr Aleksov said that such an expression is really of little assistance to the Appellant as it remains too oblique. It is necessary that the Appellant be notified with reasonable precision as to what the Tribunal's reservations were. The passage from the transcript before the Tribunal set out above was not framed with sufficient precision to provide fairness to the Appellant.

THE REPUBLIC'S ARGUMENTS

32. The Republic submits that the matters underpinning the impugned findings were sufficiently put to the Appellant by the Tribunal in the context of the issues on the review.

33. The Republic draws attention to the fact that in the Secretary's Decision, the Secretary found that the Appellant was a supporter, but not a member, of the BNP. It found that he had participated in low-level community work for people in his area who had connections with the BNP but were not otherwise active, or held any office or position, within any organ of the BNP at any level. The Secretary had found that the Appellant's evidence as to his involvement at local-level party meetings was vague and more consistent with social rather than overt political activity.

34. The Appellant subsequently took issue with this finding in his written submissions to the Tribunal dated 16 March 2025. He submitted that he had participated in discussions about party matters, "including the appointment of senior party members": at AB page 78.

35. In context, the line of questioning between the Tribunal and the Appellant noted above, in particular the description of it being "strange" that the Appellant would be involved in a meeting where senior appointments were being discussed, was a "sufficient indication" to the Appellant that the Tribunal may have some doubt about the credibility of his claim and may not accept the explanation for his presence in those meetings.

36. Mr O'Shannessy for the Republic drew my attention in particular to the decision in *SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs (2006)* 228 CLR 152 at [47] where Gleeson CJ, Kirby, Hayne, Callinan and Haydon JJ said that it is:

> "... not necessary (and often would be inappropriate) for the Tribunal to put to an applicant, in so many words, that he or she is lying, that he or she may not

be accepted as a witness of truth, or that he or she may be thought to be embellishing the account that is given of certain events".

37. Counsel for the Republic that did not quibble with the extract from paragraph [27] of *Nguyen* set out above from Gray J but drew particular attention to the second last sentence of the extracted paragraph about the fact that the Tribunal members are not required to expose all of their thought processes to scrutiny by the Appellant as a part of the hearing. The issue having been squarely put here by the Tribunal, it was not for the Tribunal then to explain the different ways in which it was not satisfied with the Appellant's evidence, or otherwise to endeavour to expose the Tribunal's thought processes. These proceedings were not adversarial in nature, they were inquisitorial. It remained incumbent upon the Appellant to satisfy the Tribunal of the matters of which it must be satisfied.

CONSIDERATION

38. The Tribunal found at [33] and [34] that the Appellant had been unable to explain why, if he was only a BNP supporter and not a member, he was at BNP meetings of the kind described by him, particularly in relation to upcoming senior appointments to the BNP. The Tribunal ultimately rejected the Appellant's claim to membership of the BNP as being of "recent invention".

39. The Tribunal put to the Appellant that "it would seem strange that you were at a meeting where possible senior positions were being discussed". I do not accept the submission on behalf of the Appellant that this question was too "oblique" to afford procedural fairness to the Appellant. As noted in the above extract from *SZBEL*, it was not necessary (indeed, it may well be inappropriate) for the Tribunal to put to the Appellant that he was lying or that he may not be accepted as a witness of truth, or that he was embellishing his story.

40. It was put to the Appellant that his account of events concerning attendance at a BNP meeting "would seem strange". In my opinion, this was more than sufficient to put the Appellant on notice that the question of his attendance at such meetings was in issue. The Tribunal was not required to expose its thought processes to the Appellant as part of the hearing: *SZHKA* at [7]; *SZBEL* at [38]-[39].

41. Further, the terms of the Secretary's Decision also made it clear to the Appellant that his claims to have attended party meetings was "vague and more consistent with social rather than overt political activity". The Appellant was on notice that his account of events in relation to attendance at BNP meetings was in issue. The course of the hearing before the Tribunal reinforced this.

42. No unfairness to the Appellant is demonstrated. This was not an adversarial process where the rule in *Browne v Dunn* (1893) 6 R 67 applied. The Appellant clearly understood the issue in light of his immediate response after it was put by the Tribunal that his account seemed strange. He also knew the significance of the question of his membership of the BNP and his attendance at BNP meetings from the terms of the Secretary's Decision.

43. No breach of the requirements of procedural fairness is made out.

CONCLUSION AND DISPOSITION OF THE APPEAL

44. The Appellant's sole ground of appeal has not been established. The appeal is dismissed.

45. Pursuant to s 44 (1) of the Act, I affirm the Tribunal Decision. I make no order as to costs.

JUSTICE MATTHEW BRADY

15 August 2025