IN THE NAURU COURT OF APPEAL
AT YAREN
CIVIL APPELLATE JURISDICTION

Refugee Appeal No. 3 of 2025
Supreme Court Refugee Appeal Case No. 10 of 2024

BETWEEN

THE REPUBLIC OF NAURU

APPELLANT

AND

AJ 24

RESPONDENT

BEFORE: **Justice R. Wimalasena, President**
Justice Sir A. Palmer
Justice Kingsley A. David

DATE OF HEARING: **28 August 2025**

DATE OF JUDGMENT: **05 September 2025**

CITATION:	The Republic of Nauru v AJ 24
KEYWORDS:	Refugee; whether the Tribunal breached its obligation in s.34(4)(d); remitting the matter; quashing the Tribunal decision; requiring better and further reasons
LEGISLATION:	s.34, 43 & 44 of the Refugees Convention Act 2012; s.45 of the Nauru Court of Appeal Act 2018
CASES CITED:	PIM 061 v The Republic of Nauru [2018] NSRC 56; Re Minister for immigration and Multicultural and Indigenous Affairs; Ex parte Palme (2003) 216 CLR 212; Transcon Holding Pty Ltd v Aged Care Quality and Safety Commissioner and Another [2023] FCAFC 60
APPEARANCES:	
COUNSEL FOR the Appellant:	Mr R .O' Shannessy
COUNSEL FOR the Respondent:	Mr A. Aleksov

JUDGMENT

1. This is an appeal by the Republic against the judgment of the Supreme Court delivered on 28 April 2025. The Supreme Court made the following orders quashing the Tribunal decision made on 12 November 2024.

> "The Appeal is allowed. Pursuant to s.44 of the Act, I make orders:
>
> (a) Quashing the decision of the Tribunal; and
>
> (b) Remitting the matter to the Tribunal for reconsideration."

2. The Respondent in this case is a Bangladeshi national born on 02 October 1996. He arrived in Australian in early February 2024. On 18 February 2024 he was transferred to Nauru.

3. On 14 March 2024 the Respondent made an application for Refugee Status Determination to be recognized as a refugee or a person to whom the Republic of Nauru owes complementary protection under its international obligations. On 30 July 2024 the Secretary for Multicultural Affairs (the Secretary) decided that the Respondent is not recognized as a refugee and is not owed complementary protection under the Refugees Convention Act 2012 (Refugees Act).

4. On 15 August 2024, the Respondent made an application to the Tribunal to review the Secretary's determination. On 12 November 2024, the Tribunal affirmed the decision of the Secretary.

5. The Respondent filed a Notice of Appeal in the Supreme Court to appeal the decision of the Tribunal on 02 October 2024. The Supreme Court quashed the decision of the Tribunal and remitted the matter to the Tribunal for reconsideration on 28 April 2025.

6. The Appellant filed a Notice of Appeal against the judgment of the Supreme Court on 28 May 2025. The Appellant advanced the following grounds of appeal:

> 1. The Court erred at J [147]-[149] in finding that the Tribunal failed to comply with s 34(4)(d) of the Refugees Convention Act 2012 (Act) with respect to the reasoning set out in paragraph [69] of its reasons.
>
> 2. Further or alternatively, the Court erred at J [150] in: (a) holding that any failure by the Tribunal to comply with s 34(4)(d) of the Act is a basis upon the Court could quash the decision of the Tribunal under s 44 of the Act and (b) rejecting the notion that the appropriate relief for breach

of s 34(4)(d) is an order with the effect of directing the Tribunal to provide compliant written statement under that section.

7. The Respondent too filed a Respondent's Notice pursuant to s.45 of the Nauru Court of Appeal Act 2018 with the following grounds:

> 1. The Court erred by failing to find that the hearing before the Tribunal did not provide the Respondent with the meaningful opportunity to give evidence and present arguments required by s 40(1) of the Refugees Convention Act (RC Act), or alternatively, failed to comply with the principles of natural justice, or in the further alternative, the Tribunal unreasonably failed to take any or any adequate steps to ensure the Respondent understood the Tribunal's questions and that the evidence and arguments the Tribunal was receiving through the interpreter were the evidence and arguments the Respondent wished to give.
>
> 2. The Court erred by failing to find that the Tribunal failed to consider properly the Respondent's written statement or alternatively took an unreasonable approach to the review.
>
> 3. The Court erred by failing to find that the Tribunal failed to consider and respond to a substantial claim.

8. The parties filed written submissions in respect of the grounds of appeal advanced by the Appellant as well as in respect of the Respondent's Notice. The appeal was taken up for hearing before the Court of Appeal on 28 August 2025. We have considered the written submissions and the oral arguments by the parties.

9. The Appellant submitted that the primary judge erred as a matter of law in two related ways:

a. in holding that a failure by the Tribunal to comply with paragraph 34(4)(d) of the Act is a basis upon which the Court could quash the decision of the Tribunal under paragraph 44(2)(b) of the Act; and

b. rejecting the appellant's argument below that the appropriate relief for a breach of paragraph 34(4) (d) of the Act is to make an order under paragraph 44(1)(b), remitting the matter to the Tribunal for reconsideration with a direction that it comply with paragraph 34(4(d) (by giving further and better reasons).

10. We will consider both grounds of appeal together. The Appellant submitted that the primary judge fairly and accurately set out the Tribunal's reasoning process at paragraph [143] of the judgment:

> (a) The Tribunal accepted that the Appellant supported the BNP;
> (b) That support of the BNP was "minimal";
> (c) The Tribunal did not accept that the Appellant or his family had a political profile such that he would be the subject of adverse interest or harm if he returned to Bangladesh;
> (d) The AL is no longer the national government of Bangladesh
> (e) As the AL is no longer the national government, it has "lost the backing of institutions such as the police which means it can no longer operate with impunity";
> (f) The Tribunal did not accept that the AL are current powerbrokers or that they could act with impunity as they had in the past;
> (g) The Tribunal did not accept that those at the local level are still subject to AL administrators or security authorities who can continue to act with impunity;
> (h) Given the Tribunal's finding that neither the Appellant nor his family's support for the BNP resulted in him being targeted in the past, in conjunction with the recent changes, it follows that there is no reasonable possibility that the Appellant would be seriously harmed

because of his continuing BNP support or because of his family membership;

(i) The Appellant thus does not have a well-founded fear of persecution for reason of his or his family's political opinions or associations

11. The Appellant submitted that the reasoning of the Tribunal at [69] of its decision involved both primary findings of fact such as the Respondent's minimal support for the BNP and AL no longer being the national government. The Appellant argued that based on those, the Tribunal was correct in drawing inferences from those facts such as AL had lost the backing of institutions like police and could no longer act with impunity. The Appellant submitted that this was a proper process of reasoning and the Tribunal was entitled to make findings based on evidence or primary facts and then draw inferences from those facts.

12. The Appellant argued that although the primary judge acknowledged this in paragraph [145] of the judgment, it was wrong to find that it is "not simply not possible to know what evidence was relied on by the Tribunal and why". The Appellant further submitted that the Tribunal may rely on its specialized or commonly accepted knowledge in reaching conclusions. Against this background, the Appellant argued that there was no breach s.34(4) of the Refugees Act.

13. The Respondent submitted that the Tribunal's reasoning at paragraph [69] of its decision was wrong as it went beyond the primary facts to draw inferences based on those primary facts. The Respondent argued that the conclusions made by the Tribunal as set out in (e)-(g) in paragraph [143] of the Supreme Court judgment could not logically and safely be inferred from the primary facts alone, particularly given Bangladesh's federalized system of government with multiple layers of administration. It was argued that how recent political changes at national level may impact subordinate structures was a question requiring evidence and, not assumption.

14. The Respondent further contended that the Appellant's reliance on specialized knowledge has no relevance in the findings by the Tribunal in this case. It was submitted that even if the Tribunal had special knowledge s.34(4)(d) of the Refugees Act required it to identify the evidence which such findings were made.

15. We have considered the reasons given by the primary judge. It appears that the primary judge had identified the process of reasoning of the Tribunal in paragraph [143] of the judgement as set out in paragraph [10] above. The argument revolves around (e) – (g) in that process of reasoning. The primary judge correctly stated the following in respect of drawing conclusions based on known facts:

> [145] A proper process of reasoning may, in appropriate circumstances, involve the drawing of inferences from known facts. However, the Tribunal cannot simply draw inferences divorced from the evidence before it. It cannot proceed simply on the basis of speculation or conjecture: WET040 v Republic of Nauru [2018] HCA 60; (2018) 93 ALJR 102 at [29]-[31]; nor can it engage in "conjectural analysis or mere guesswork": WET054 v Republic of Nauru [2018] NRSC 21 at [35] (an appeal from this judgment was dismissed [2023] NRCA 8).

16. We have carefully considered the reasons given by the primary judge in relation to this argument. It is not in dispute that the findings recorded at (e)–(g) were expressed as inferences drawn by the Tribunal. The question is whether those inferences were reasonably drawn on the basis of the primary facts identified at (a)–(d). Where inferences are drawn from established facts, there must be a rational connection between the primary fact and the finding. If such a nexus cannot be demonstrated, the conclusion cannot properly be described as an inference but is merely an assumption unsupported by evidence.

17. The Appellant asserted that, based on the expertise acquired by the Tribunal over time, it was within its specialised knowledge to draw such inferences. While it may be accepted that in some circumstances the Tribunal may properly rely on its accumulated knowledge, we are not persuaded that this was such a case. The recent changes in the political dynamics of Bangladesh, and their effect on peripheral administrative structures, required support from proper country information. In the absence of such material, the findings could not be sustained on the basis of specialised knowledge alone.

18. Section 34(4) of the Refugees Act provides:

> "The Tribunal shall give the applicant for review and the Secretary, a written statement that:
> (a) sets out the decision of the Tribunal on the review;
> (b) sets out the reasons for the decision;
> (c) sets out the findings on any material questions of fact; and
> (d) refers to the evidence or other material on which the findings of fact were based."

19. In view of the statutory requirements, it is very clear that the Tribunal is obliged to refer to the evidence or other material on which the findings of fact were based. Accordingly, we are of the view that the primary judge was correct to conclude that the Tribunal failed to comply with the requirement set out in s.34(4)(d).

20. The Appellant further submitted in view of the ground two of its appeal, that even if the Tribunal failed to comply with s. 34(4)(d) the primary judge should not have quashed the decision of the Tribunal but instead the matter should have been remitted only to give the reasons for those findings. The Appellant argued that the failure to comply with s 34(4)(d) is not an error of law that "infects the decision itself".

21. The Appellant relied on PIM 061 v The Republic of Nauru [2018] NSRC 56, and argued that the primary judge's reasoning was inconsistent with what is held in PIM. At paragraph [150] of the judgment the primary judge held:

> [150] I reject the Republic's contention that the appropriate relief for a breach of s 34(4) is an order in the nature of mandamus. The Australian cases relied upon by the Republic (such as Palme) are in a context where the Courts were considering prerogative relief because of a jurisdictional error and in a quite different statutory environment. That is not the test for this Court. The question for me is whether the appeal ought to succeed "on a point of law". In my view, it should.

22. The Respondent submitted that the Australian High Court decision Palme is not relevant to this appeal under consideration as it was based on jurisdictional error. In any event, we are not inclined to accept the argument of the Appellant as it was a remark made in *obiter* and the decision was not based on it. In paragraph [51] of PIM (supra) the following remark was made by referring to the judgment of the High Court of Australia in Re Minister for immigration and Multicultural and Indigenous Affairs; Ex parte Palme (2003) 216 CLR 212:

> [51] However, where there is a statutory obligation for a decision-maker to give reasons, the failure to do so may constitute an error of law, subject to the limitation enunciated by the plurality of the High Court in Palme. So much was concluded by the Full Court of the Australian Federal Court in Re John Hugh Michael Dornan; Reginald Chester Crowe and Extended Hours Pharmacies Association v JM Riordan; MA Jackson; JR Richardson and the Commonwealth of Australia, where Sweeney, Davies and Burchett JJ said:

"Notwithstanding an observation to the contrary by Brennan J in his dissenting opinion in Repatriation Commission v O'Brien [1985] HCA 10; (1985) 58 ALR 119 at pp 136-7, the law appears to us to be that a substantial failure to state reasons for a decision, in the circumstance that a statement of reasons is a requirement of the exercise under the statute of the decision making power, constitutes an error of law..."

23. The Appellant also relied on Transcon Holding Pty Ltd v Aged Care Quality and Safety Commissioner and Another [2023] FCAFC 60 to support his contention:

[101] **Provision of reasons for a decision is conceptually distinct from the making of the actual decision, and it is the decision (not the reasons) that is the subject of judicial review**: Civil Aviation Safety Authority v Central Aviation Pty Ltd (2009) 253 ALR 263 (Central Aviation FCA) at [31] (Perram J) (an appeal from this decision was allowed in part, but this aspect of the reasoning was not doubted: Civil Aviation Safety Authority v Central Aviation Pty Ltd (2009) 179 FCR 554 (Bennett, Flick and McKerracher JJ)) (Central Aviation FCFCA). **Non-compliance with a duty to give reasons is therefore not an error of law that infects the decision itself (although it may provide a basis on which to infer the existence of error in the decision)**, and would (at least ordinarily) not be regarded as jurisdictional. Because the order that the Court makes under s 44(4) must appropriately relate to the error of law that it has found (Minister for Immigration and Ethnic Affairs v Gungor (1982) 6 A Crim R 81 at 92; 42 ALR 209 at 220 (Sheppard J)), some attention is therefore needed to questions of when, and why, inadequacy of reasons will call for a decision of the Tribunal to be set aside. **Where the reasoning underpinning the decision can be discerned and no legal error is found in that reasoning, it is difficult to see why non-compliance with s 43(2B) should result in the decision being set aside.**

> **The position may be different where inadequacy of the written reasons is such that the reasoning of the Tribunal cannot be understood, and the Court and the parties can therefore have no confidence that that reasoning was sound (cf Central Aviation FCFCA at [50], [55]). Even then, mandamus to require provision of compliant reasons (or some order having equivalent effect), rather than an order setting aside the decision, may be the appropriate response.** (In Central Aviation FCA Perram J left the decision in place but remitted the matter to the Tribunal for preparation of proper reasons. The order proved to be impossible to carry out, because the Tribunal member's term had expired; and the Full Court, on appeal, saw no alternative but to set aside the decision.) (emphasis added).

24. The Appellant submitted that the s. 44 of the Administrative Appeals Tribunal Act 1975 is substantially similar to s.43(1) of the Refugees Act. But it should be noted that apart from both provisions speaks of appealing a decision on a question of law, there is no substantial similarity in the other provisions which are relevant to the issue under consideration. Refugees Act specifically requires for the Tribunal to refer to the evidence or other material on which the findings of fact were based on and to give a written statement.

25. The Respondent submitted that unlike the position in Transcon (supra) the Refugees Act expressly links the 'decision' with the 'reasons for the decision' requiring the Tribunal to issue a single written statement containing both the decision and the supporting reasons and evidence. The Respondent further argued that Transcon does not establish a universal rule that inadequate reasons can never justify quashing.

26. The Appellant further contended that the appropriate relief where reasons are inadequate is to remit the matter to the Tribunal with a direction to provide reasons and to comply with s 34(4)(d) and not to quash the decision of the Tribunal. It was submitted that quashing of the decision should only occur in

exceptional circumstances where inadequacy of reasons makes it impossible to discern the Tribunal's reasoning.

27. It should be noted that while the authorities relied upon by the Appellant shed some light on the treatment of inadequate reasons, those authorities must be considered in the context of the statutory requirements of the Refugees Act. As discussed above, s 34(4)(d) of the Act expressly requires the Tribunal to provide a written statement referring to the evidence or other material on which its findings of fact are based. In our view, non-compliance with such a mandatory statutory requirement constitutes an error of law. We are not persuaded by the Appellant's submission that such non-compliance should not be treated as an error of law that infects the decision itself, a submission that rests on Australian authorities decided under different statutory schemes. We therefore find no error in the below conclusion reached by the primary judge:

> [149] I am satisfied that there was an error of law in that the Tribunal did not comply with the mandatory requirements of s 34(4)(b).

28. We will now consider whether the quashing of the Tribunal's decision was proper. The Appellant contended that the appropriate relief for a breach of s 34(4)(d) was an order under s 44(1)(b), remitting the matter to the Tribunal with a direction to provide further and better reasons. The Respondent, on the other hand, submitted that it was a matter for the primary judge's discretion whether to quash the decision, having regard to the circumstances of the case.

29. Section 44 of the Refugees Act provides:

> **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; or

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

(2) Where the Court makes an order remitting the matter to the Tribunal, the Court may also make either or both of the following orders:

(a) an order declaring the rights of a party or of the parties; and

(b) an order quashing or staying the decision of the Tribunal.

30. It is clear that s 44(1) empowers the Supreme Court either to affirm the decision of the Tribunal or to remit the matter for reconsideration. In our view, this provision does not permit the Supreme Court to preserve the Tribunal's decision while at the same time remitting it solely for the purpose of supplementing its reasons. Although s 44(1)(b) authorises the Court to give directions when a matter is remitted, we do not accept the Appellant's contention that such directions could extend to requiring the Tribunal merely to provide further and better reasons while leaving the operative decision intact. Nor do we see any practical utility in such an approach. An order for reconsideration must be given full effect, and the Tribunal must, if appropriate, be free to reach a different conclusion once proper reasons have been provided for its findings.

31. In the circumstances we conclude that it was correct for the primary judge to quash the decision of the Tribunal and to remit the matter for reconsideration pursuant to s 44 of the Refugees Act.

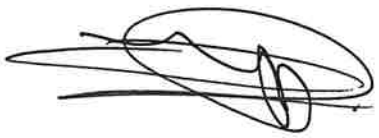
32. Accordingly, the ground two also fails.

33. We do not find any reason to consider the grounds of appeal in the Respondent's Notice in those circumstances.

34. The Appeal is dismissed with costs.

Dated this 05 September 2025.

Justice Rangajeeva Wimalasena



President

Justice Sir Albert Palmer

Justice of Appeal

Justice Kingsley A. David

Justice of Appeal