



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

Appeal No 9 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:**

**AI25**

Appellant

**AND:**

**REPUBLIC OF NAURU**

Respondent

Before: Brady J

Date of Hearing: 30 April 2025

Date of Judgment: 8 August 2025

Citation: *AI25 v Republic of Nauru*

## **CATCHWORDS:**

*APPEAL - Refugees – Refugee Status Review Tribunal –whether the Tribunal failed to afford procedural fairness to the Appellant in failing to notify him of adverse conclusion – Appellant had notice of relevant issues - the Tribunal did not breach the requirements of procedural fairness - appeal dismissed*

## **LEGISLATION:**

Sections 43,44 of the *Refugees Convention Act 2012* (Nr)

## **CASE CITED:**

*Commissioner for Australian Capital Territory Revenue v Alphaone Pty Ltd* (1994) 49 FCR 576 at 591-592; *Kioa v West* (1985) 159 CLR 550 at 587, 628; *Sinnathamby v Minister for Immigration and Ethnic Affairs* (1986) 66 ALR 502 at 506, 513; *Ansett Transport Industries Ltd v Minister for Aviation* (1987) 72 ALR 469 at 499; *Geroudis v Minister for Immigration, Local Government and Ethnic Affairs* (1990) 19 ALD 755 at 756-757 ; *Somaghi v Minister for Immigration, Local Government and Ethnic Affairs* (1991) 31 FCR 100 at 103, 119; *SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs* (2006) 228 CLR 152; *SOS 005 v Republic of Nauru* [2023] NRCA 18 at [73]-[78]

## **APPEARANCES:**

Counsel for Appellant: Mr A Aleksov (instructed by Craddock Murray Neumann)

Counsel for Respondent: Mr N Wood, SC (instructed by Republic of Nauru)

# JUDGMENT

## INTRODUCTION

1. The Appellant is a national of Bangladesh. On 28 June 2024, the Appellant made an application to be recognised as a refugee or a person owed complementary protection.
2. The Appellant claims to have borrowed a large sum of money in 2016 from a wealthy man in Bangladesh with links to the Awami League (AL). He describes the lender as a kind of “loan shark” and a thug, known in Bengali as a “mastaan”.
3. The Appellant claims that he and his family are supporters of the Bangladesh National Party (BNP). His main concern is apparently that his creditor would be able to pursue and harm him with impunity if he were to return to Bangladesh.
4. Pursuant to s 43 of the *Refugees Convention Act* 2012 (Nr) (**the Act**), the Appellant appeals from a decision of the Refugee Status Review Tribunal dated 4 February 2025 (**Tribunal**). The Tribunal affirmed a decision of the Acting Secretary of the Department of Multicultural Affairs (**Secretary**) dated 30 July 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.
5. By s 43 (1) of the Act, the Appellant may appeal to this Court on a point of law.
6. 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

7. In his amended notice of appeal filed 8 April 2025, the Appellant relies upon a single ground of appeal in these terms:

The Tribunal did not afford procedural fairness to the Appellant, in failing to notify him of the adverse conclusion at Reasons [54].
8. 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; and
  - (b) pursuant to s 44(2)(b) of the Act, that the Tribunal Decision be quashed.

## FACTUAL BACKGROUND

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

10. The Appellant fears persecution in Bangladesh due to his political opinion as a BNP supporter, and because he owes money to a powerful AL supporter.
11. The Appellant was raised in a family that supported the BNP, although his family were not politically involved as they were impoverished and focused on survival.
12. In 2016, the Appellant says that his family borrowed money from a local AL supporter, [R], who is rich and powerful. The Appellant travelled to Malaysia in April 2016 to earn money to support his family and to pay back the loan. He was unable to make any significant loan repayments.
13. Additionally, the lender was charging a lot of interest, and the Appellant was unable to make a dent in the loan amount.
14. The Appellant contends that the lender began threatening his family unless the loan was repaid. The lender threatened that his family would be badly beaten and killed. The Appellant contends that his family could not complain to the authorities against the lender – whom he describes as a mastaan, or thug - as he has AL backing and the Appellant’s family are BNP supporters.

## **PROCEDURAL HISTORY**

15. The Appellant made his initial refugee status determination (**RSD**) application on 28 June 2024. On 30 July 2024, the Secretary decided that the Appellant is not a refugee and is not owed complementary.
16. After an extension of time for the lodgement of a review application, the Appellant filed a review application with the Tribunal dated 28 September 2024.
17. The Appellant’s representative filed detailed submissions concerning the Appellant’s claim dated 13 December 2024. Those submissions were accompanied with a further statement by the Appellant dated 10 November 2024. Other generic submissions were provided to the Tribunal concerning the situation in Bangladesh.
18. On 16 December 2024, the Appellant appeared before the Tribunal to give evidence and present arguments. He was assisted by an interpreter. In addition, his representative attended the hearing and made submissions.
19. The Tribunal made the Tribunal Decision on 4 February 2025 affirming the Secretary's determination that the Appellant is not recognised as a refugee and is not owed complementary protection.
20. An appeal to this Court was filed on 13 February 2025. An amended notice of appeal containing the single ground of appeal was filed on 8 April 2025.
21. I heard argument on the appeal on 30 April 2025.

## **APPELLANT’S ARGUMENTS**

22. The Appellant notes that the Tribunal addressed the credibility of the Appellant’s narrative as to his claim to owe a debt to a loan shark at paragraph [39] of the Tribunal Decision. That paragraph sets out four reasons as to why the Tribunal had

concerns about the reliability of the Appellant's claims and evidence relating to the loan.

23. The Appellant draws attention to the fourth reason advanced in paragraph [39]. It is in the following terms:

*Fourth.* the [Appellant's] subsequent evidence about the funding of his travel to Australia included mention of his own savings, the value of his parents' property and his uncle's assets. The Tribunal examines these below. Essentially, these undermine the [Appellant's] claims about his family's poverty and his financial vulnerability, and raised questions about the credibility of his claim to be a victim of a loan shark.

24. The Appellant notes that the observation that he was able to pay for his travel to Australia from Malaysia, which is money that he might have put towards paying off the loan, was a point discussed more fulsomely at [50] – [55] of the Tribunal Decision:

[50] At the RSD interview, the [Appellant] said that his travel to Australia cost Tk 900,000, and his maternal uncle gave him the funds. As for whether there had been any prior thought about using such funds to repay [R] – and hence reduce any risks to his or his family's safety – he replied obliquely that he had hoped to be able to provide for his family and repay his uncle (but not, by implication, [R]).

[51] At the Tribunal hearing, the [Appellant] gave a more detailed account of the finding for his travel:

- His maternal uncle contributed Tk 600,000 towards his travel costs;
- The [Appellant] used some Tk 200,000 from his own savings, which included Tk 100,000 in a bank account;
- He was able to obtain Tk 100,000 from his family. It was in this context that the [Appellant] mentioned that the estimated value of his family's property was Tk 400,000 to \$500,000.

[52] Asked why he had not used some or all of that money to repay [R], the [Appellant] deflected the question to say that the agent who arranged his travel from Malaysia initially demanded Tk 450,000.00. On his arrival in Indonesia, he had been mistreated and required to pay a further Tk 400,000.00; and later, another Tk 100,000.00. He did not address directly why he and his family - if they had been subject to credible threats from [R] - had not drawn on these resources to at least partially repay him.

[53] The Tribunal recognises that indebted overseas workers may be tempted to borrow more money to fund further overseas stays and employment, rather than return to poorer economies. DFAT notes in its November 2022 report anecdotal evidence that in instances where a Bangladeshi overseas worker has been unable to send back sufficient remittances to pay a loan, lenders are "more likely to lend more money to fund a further attempt to migrate than they are to use violence to recover the debt".

- [54] It is understandable that the [Appellant] was motivated to live and work in Australia and would prefer to use any funds for that purpose rather than to service a loan in Bangladesh. However, the [Appellant's] non-repayment of at least part of the loan adds to doubts about the seriousness of any threats from an unpaid creditor, towards him and his family.
- [55] The [Appellant's] account of how he raised another Tk 900,000.00 to fund his travel to Australia reinforces the Tribunal's concerns that his account of being indebted to a loan shark, of having paid off none of the loan, and of being subject to credible death threats in the event that he returns to Bangladesh, are unreliable.
- [56] In light of the analysis above, the Tribunal accepts that the [Appellant] (and his family) borrowed money for his travel to Malaysia and again for his travel to Australia. It accepts that he feels under financial pressure, in part due to his modest income in Malaysia, his wish to help his family (including the costs of his mother's medical treatment) and his contributions to his brother's education; as well as financial obligations to those who funded his travel. The Tribunal appreciates that the [Appellant] and his family undertook further debt to fund his travel to Australia, and that he now faces poor prospects of being able to work abroad to repay it.
- [57] The Tribunal makes the following the findings in relation to the loan:
- The [Appellant] and his parents borrowed money for his travel to Malaysia (Tk 650,000) and additional funds for his sister's wedding;
  - This was an unwritten loan, backed by members of the [Appellant's] family and community;
  - The main lender [R] was a local businessman and benefactor. Although he may have had links to the AL, the Tribunal does not accept that he is a 'loan shark' or a thug, or that political preferences played any role in the loan arrangements;
  - The Tribunal does not accept that the [Appellant] and his family have paid nothing off the loan, and now face debts that include accumulated interest. Even taking into account that the [Appellant] may not have earned well in Malaysia and may have had ongoing family expenses to meet, his other evidence about his ability to raise funds for his travel to Australia leads the Tribunal to disbelieve that he has not made any repayments at all;
  - The Tribunal accepts as plausible that [R] may have chased up some loan repayments and even spoken of legal actions. However, it finds that such conduct was within his rights as a creditor, and it does not accept that they included any credible threats to harm or kill the [Appellant] or his family, who continue to live in the area.
- [58] The Tribunal does not accept that the [Appellant] fears persecutory harm or other proscribed treatment at the hands of [R] or his associated; or that he

would be denied state protection in the event of any such action. It accepts, however, that he strongly wishes to provide for his family, and that he fears financial and societal pressure if he were to return to Bangladesh without recouping the costs of his travel to Australia, or being able to contribute to family costs.

24. The Appellant argues that paragraph [55] sets out three separate concerns on the part of the Tribunal:
  - (a) whether his account of being indebted to a loan shark ought to be accepted;
  - (b) whether the Appellant had paid off any of the loan; and
  - (c) whether the Appellant is subject to credible death threats if he was to return to Bangladesh.
25. The Appellant contends that nothing in the course of the proceedings before the Tribunal could have brought to the Appellant's attention that there was any issue as to whether he had incurred the debt at all (i.e. the first concern expressed above) or whether there were credible death threats (the third concern expressed above).
26. In written submissions, the Appellant contends that the statement at [54] of the Tribunal Decision that the Appellant's non-repayment of at least part of the loan adds to doubts about the seriousness of any threats from an unpaid creditor is said to be a "substantial adverse conclusion" and one that the Appellant could not reasonably have been expected to contemplate. The Appellant argues that at the hearing before the Tribunal, the Tribunal did not ask questions about why he did not use the travel money to repay at least some of the debt, nor did it notify the Appellant that it might make a finding of its kind.
27. The Appellant argues that to afford him procedural fairness, the Tribunal was required to notify him of any adverse conclusion which would not obviously be open on the known material.
28. The Appellant recognises that there was a discussion before the Tribunal of having not paid off the loan, although counsel for the Appellant says that this was no more than "flirt[ing] with the issue" or an "oblique" reference. The Appellant's counsel submits that this was not sufficient to notify the Appellant that the Tribunal might draw something adverse from the observation that he did not use the travel money to repay the debt in Bangladesh.
29. The relevant passages of the transcript before the Tribunal are on pages 19 to 20 of the transcript. At T20 line 19 - 27, the following passage is found:

Mr Silva: Help me understand then, you had borrowed initially about the same amount from [R] and as a consequence of you not paying him back any money at all, not one taka, he was making your, I believe, he's been making your parents or family's life miserable. Now, when the opportunity to come to Malaysia arose, however, you've explained that you were able to raise money.

Ms Cranston: Australia.

Mr Silva: I'm sorry. Towards Australia - when you have the opportunity to go towards Australia or to depart Malaysia, you then manage to nonetheless raise the Tk 900,000.00, which might have met at least some, if not all, of (indistinct) demands.

The Interpreter: The thing is, originally the contract was only for 450,000 Taka but they sort of kept in a room while I was in Indonesia. I was beaten up and tortured. They wouldn't let me go anywhere until I paid them the other amount. So I had to arrange to give them the money.

## REPUBLIC'S ARGUMENTS

30. In written submissions, the Republic advances three answers to the Appellant's case.
31. First, the concern identified by the Tribunal was also identified by the Secretary in his decision. At page 5 of the Secretary's Decision, the following passage appears:
- [The Appellant] claimed that in 2024 his maternal uncle lent him Tk 900,000.00 to pay for his attempted journey to Australia. Asked why he did not use this money to pay down some of his debt and potentially mitigate the risk of harm to himself and his family from the *mastaan*, he replied that "If Allah can take me successfully to Australia I will be able to provide for my family in the future and pay back the money that is owed to my uncle".
31. Further, on page 8 of the Secretary's Decision, the following passage appears:
- Furthermore, some of [the Appellant's] claim conduct is not, in my view, suggestive of him sincerely fearing the *Mastaan* may harm him or his family. That the [Appellants] never made any repayment on the loan at any stage causes me to doubt whether he genuinely fears the *Mastaan* would actually harm his family. Moreover, the manner in which the [Appellant] prioritised his spending, does not reconcile with a fear of harm for not repaying the loan (which he claims he took out seven years ago).
32. Thus, the Republic says that the Appellant must have known from the terms of the Secretary's Decision that his use of funds to travel to Australia rather than to repay the loan was a matter which cast doubt on his account.
33. Second, the Republic submits that the Tribunal's interactions with the Appellant at the hearing made plain that it was concerned about the credibility of his claim. I have set out above the relevant passage in the transcript where Member Silva expressed the need for assistance in understanding why the funds which he raised to travel to Australia were not used to meet the debt to [R].
34. Thirdly, the Republic notes that the Appellant's agent clearly understood that this was a matter of concern to the Tribunal. This was squarely addressed by the Appellant's representative at T26 lines 5 - 14 in these terms:

Mr Mohamed: The other thing is, there was a question why raise money to go to Australia and not pay what we got. I think [the Appellant] found himself in a predicament in that he had no visa to remain in Malaysia and he could not go back because of the fear of harm that might be caused to him for not paying the loan. So this is despite the fact that for eight years he hasn't visited his sick parents, and that's a big deal, very significant, I think, when in - the Bangladeshi culture, family and the parents are really important. And when they are sick, you just stop everything and go and see them. But he couldn't do that. He had to find an alternative to not being deported back from Malaysia to Bangladesh. So his family has to come and help him in that process.

34. For those three reasons, the Republic disputes the Appellant's contention that he could not reasonably have foreseen that the issue of his use of money to travel to Australia rather than to pay off his debt was a matter which contributed to a view as to whether [R] was truly threatening him and his family.
35. In oral submissions, counsel for the Republic criticised the Appellant's efforts to take paragraph [55] out of context and to "slice and dice" the findings in an unhelpful way.

## CONSIDERATION

35. The legal principle at issue in this case is usefully encapsulated in *Commissioner for Australian Capital Territory Revenue v Alphaone Pty Ltd* (1994) 49 FCR 576 where, at 591-592, the Full Court said:

A person likely to be affected by an administrative decision to which requirements of procedural fairness apply can support his or her case by appropriate information but cannot complain if it is not accepted. On the other hand, if information on some factor personal to that person is obtained from some other source and is likely to have an effect upon the outcome, he or she should be given the opportunity of dealing with it: *Kioa v West* at 587 (Mason J), 628 (Brennan J). Within the bounds of rationality a decision-maker is generally not obliged to invite comment on the evaluation of the subject's case: *Sinnathamby v Minister for Immigration and Ethnic Affairs* (1986) 66 ALR 502 at 506 (Fox J), 513 (Neaves J). In *Ansett Transport Industries Ltd v Minister for Aviation* (1987) 72 ALR 469 at 499, Lockhart J expressly agreed with the observations of Fox J in *Sinnathamby* on this point. See also *Geroudis v Minister for Immigration, Local Government and Ethnic Affairs* (1990) 19 ALD 755 at 756-757 (French J) and *Somaghi v Minister for Immigration, Local Government and Ethnic Affairs* (supra) at 103 (Keely J), 119 (Gummow J).

The general propositions set out above may be subject to qualifications in particular cases. Two such qualifications were enunciated by Jenkinson J in *Somaghi* at 108-109:

1. The subject of a decision is entitled to have his or her mind directed to the critical issues or factors on which the decision is likely to turn in

order to have an opportunity of dealing with it: *Kioa v West* at 587 (Mason J); Sinnathamby at 348 (Burchett J); *Broussard v Minister for Immigration and Ethnic Affairs* (1989) 21 FCR 472 (Burchett J).

2. The subject is entitled to respond to any adverse conclusion drawn by the decision-maker on material supplied by or known to the subject which is not an obvious and natural evaluation of that material: *Minister of Immigration and Ethnic Affairs v Kumar* (unreported, Full Court, Federal Court, 31 May 1990); *Kioa v West* at 573, 588 and 634.

His Honour observed that those qualifications may be no more than an application of the general requirement of procedural fairness in particular cases. As Gummow J there said (at 359):

“ ... in a particular case, fairness may require the applicant to have the opportunity to deal with matters adverse to the applicant's interests which the decision-maker proposes to take into account, even if the source of concern by the decision-maker is not information or material provided by the third party, but what is seen to be the conduct of the applicant in question.”

Where the exercise of a statutory power attracts the requirement for procedural fairness, a person likely to be affected by the decision is entitled to put information and submissions to the decision-maker in support of an outcome that supports his or her interests. That entitlement extends to the right to rebut or qualify by further information, and comment by way of submission, upon adverse material from other sources which is put before the decision-maker. It also extends to require the decision-maker to identify to the person affected any issue critical to the decision which is not apparent from its nature or the terms of the statute under which it is made. The decision-maker is required to advise of any adverse conclusion which has been arrived at which would not obviously be open on the known material. Subject to these qualifications however, a decision-maker is not obliged to expose his or her mental processes or provisional views to comment before making the decision in question. For a statutory exception to the latter proposition see the pre-decision conference process provided for in the *Trade Practices Act 1974* (Cth). [Emphasis added]

36. This decision has been followed in Australia, including in the High Court, in cases such as *SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs* (2006) 228 CLR 152. There, the High Court confirmed that if the tribunal takes no step to identify some issue other than those that the delegate considered to be dispositive and does not tell the applicant what that other issue is, the applicant is entitled to assume that the issues considered dispositive are those the matters arising in the issue under review: see in particular at [33]-[36].
37. *SZBEL* has been adopted in this jurisdiction: e.g. *SOS 005 v Republic of Nauru* [2023] NRCA 18 at [73]-[78]
38. The Appellant's written argument (based on the amended notice of appeal) that he was not afforded procedural fairness in respect of the adverse conclusion in paragraph [54] of the Tribunal Decision cannot be accepted. The Tribunal's concern as

expressed in [54] that the Appellant's non-repayment of at least part of the loan cast doubts on the seriousness of any threats was a matter of which the Appellant was given adequate notice. He knew that it was a relevant matter for the Tribunal.

39. First, it is apparent from the Secretary's Decision that the way the Appellant prioritised his spending (i.e. to use money to pay to travel to Australia and other expenses rather than to repay [R]) was not consistent with a fear of harm for not repaying the loan. Thus, the Appellant was on notice from the Secretary's Decision that the non-repayment of his loan was a matter inconsistent with his case that he feared harm.
40. Second, the Tribunal itself in questioning the Appellant indicated that this was an issue that may impact on the credibility of his claim. I have set out above the relevant passage of the transcript of the Tribunal hearing that deals with that question.
41. Third, the Appellant's representative clearly appreciated the significance of this issue as also recorded in the transcript reference above.
42. The Appellant thus was given an opportunity to appreciate the significance of the issue identified in paragraph [54] of the Tribunal Decision. He was given a sufficient opportunity to give evidence and make submissions in relation to that issue in accordance with the requirements of *SZBEL* and *SOS 005*.
43. The Appellant's argument as developed orally had a different focus from the written submission. The appellant fixed instead on paragraph [55] of the Tribunal Decision. He submitted that there were three adverse conclusions, only one of which was "obliquely" raised by the Tribunal and the other two not at all.
44. The Tribunal Decision must be read fairly and as a whole. It is not appropriate to parse paragraph [55] in a manner which is divorced from the balance of the decision, or to unfairly split each constituent part of paragraph [55] and to consider it in isolation. The Tribunal was concerned with the reliability of the Appellant's entire account. The fundamental question being confronted by the Tribunal was whether the Appellant had in fact borrowed money from a mastaan who was threatening the Appellant and his family in consequence.
45. The Appellant was clearly on notice that the question of whether he had borrowed money from a mastaan, and was in consequence threatened, was an issue before the Tribunal. The Tribunal accepted that the Appellant had borrowed money from [R] (at [57]) but did not accept that nothing had been repaid. The Appellant was on notice that the question of his repayment was in issue, for the reasons that I have set out above in relation to the Appellant's arguments concerning [54] of the Tribunal Decision.
46. It is also clear that the existence of otherwise of death threats was an issue before the Tribunal, in light of the Secretary's Decision as well as a fair reading of the hearing before the Tribunal.
47. Contrary to the Appellant's oral submission, the very existence of the loan was not in issue. Indeed, the existence of the loan was accepted by the Tribunal at [57]. What was not accepted was that the loan was obtained from a mastaan who had made

threats. Those were the issues which the Appellant ought to have understood at the time of his appearing before the Tribunal were of concern to the Tribunal. The Appellant was not deprived of procedural fairness. He did have a reasonable opportunity to understand the relevant issues.

48. This ground of appeal therefore fails.

#### **CONCLUSION AND DISPOSITION OF THE APPEAL**

49. For the reasons set out in this judgment, I have found that the Appellant has not established his single ground of appeal. The appeal is therefore dismissed.

50. Pursuant to s 44 (1) of the Act, I make an order affirming the Tribunal Decision.

51. I make no order as to costs of the Appeal.



**JUSTICE MATTHEW BRADY**

8 August 2025