



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

**Appeal No. 18 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:**

**AR25**

Appellant

**AND:**

**REPUBLIC OF NAURU**

Respondent

Before: Brady J

Date of Hearing: 14 August 2025

Date of Judgment: 19 November 2025

**CITATION:** *AR25 v Republic of Nauru*

## **CATCHWORDS:**

*APPEAL - Refugees – Refugee Status Review Tribunal – whether Tribunal misunderstood or misconstrued the evidence before it – the Tribunal did not misunderstand or misconstrue the evidence – Appeal Dismissed*

## **LEGISLATION:**

*Refugees Convention Act 2012 (Nr)*

## **CASE AUTHORITIES:**

*NABE v Minister for Immigration and Multicultural and Indigenous Affairs (No 2) (2004) 144 FCR 1; TTY 167 v Republic of Nauru [2022] NRSC 30; QLN 107 v Republic of Nauru [2018] NRSC 23; Applicant WAEE v Minister for Immigration and Multicultural and Indigenous Affairs (2003) 256 FCR 593*

## **APPEARANCES:**

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

Counsel for the Respondent: Mr R O'Shannessy (instructed by Republic of Nauru)

# **REASONS FOR JUDGMENT**

## **INTRODUCTION**

1. The Appellant is a national of Bangladesh. He arrived in Australia in February 2024 and was shortly thereafter transferred to Nauru pursuant to the Memorandum of Understanding between the Governments of Nauru and Australia. He made an application for refugee status determination (**RSD**) on 14 March 2024.
2. The Appellant claims that he is a supporter of the Bangladesh Nationalist Party (**BNP**). He claims that members of the Awami League (**AL**) demanded that he pay a sum of money if he wanted to stay in his village. Further, on 5 January 2024, he claims that people came to his home, woke him, demanded that he come out of the house and demanded more money. He did not have the money and saw no option but to subsequently leave his home, and Bangladesh.

3. The Appellant contends that he continues to hold a fear of returning 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 made on 23 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**). The Secretary determined that the Appellant was not recognised as a refugee under the Act and that he was not owed complementary protection.
5. By s.43(1) of the Act, the Appellant may appeal to this Court on a point of law. By s.44(1) of the 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 reconsideration in accordance with any directions of this Court.

#### **GROUND OF APPEAL**

6. By his Amended Notice of Appeal dated 16 June 2025, the Appellant advances a single ground of appeal in these terms:
  1. The Tribunal misunderstood or misconstrued the evidence before it:
    - (a) at Reasons [52], the Tribunal states that the Appellant's evidence to the Tribunal was that he never formally joined the BNP. The evidence at T9 is to the effect that he was a member of the BNP, but at his level, he was not required to fill out paperwork to become a member of the BNP.
    - (b) at Reasons [53], the Tribunal states that the Appellant could not remember giving a speech at a market or BNP meeting room, despite having claimed to have given a speech at a market before the Secretary. The exchange is at T10.9–17, and the Appellant said that he did give a speech at a market, but that he 'did not need to give any speech in the big market meeting or some procession or something like that'.
    - (c) at Reasons [55], the Tribunal found that the Appellant had failed to vote in elections for the BNP, which was a circumstance that is inconsistent with his claims to BNP support. However, it was explained – voting booths were blocked by the Awami League, see T8.32 and T13.24.

#### **FACTUAL BACKGROUND**

7. In summary, the Appellant makes the following submissions in relation to why he is said to be owed protection under the Act.

8. The Appellant claimed that he was a BNP activist, and the victim of extortion demands. The demands were made by so-called mastaans, in other words, gangsters linked to politicians and the state, who were acting on behalf of the AL. He contends that eventually they demanded sums of money that he was unable to pay, and he fled Bangladesh to avoid them.
9. Before the Tribunal, the Appellant stated that given the change in the political situation in Bangladesh, the mastaans no longer have the means and ability to harm him and he did not believe they would harm him if he returned to Bangladesh.
10. However, the Appellant does not wish to return to Bangladesh as he has sold his share of the family land and he would have to rely on his brother. He has significant financial responsibilities in Bangladesh, and he has no land. He owes money to his relatives. He has daughters who should be married soon.

### **PROCEDURAL HISTORY**

11. The Appellant made his RSD application on 14 March 2024. The Secretary's Decision was dated 27 September 2024. The Secretary determined that the Appellant was not a refugee and was not owed complementary protection.
12. On 1 October 2024, the Appellant applied to the Tribunal for review of the Secretary's Decision.
13. On 27 January 2025, the Appellant appeared before the Tribunal to give evidence and to present arguments. He was assisted by an interpreter in the Bengali and English languages. He also had the assistance of his representative, who attended the hearing.
14. The Tribunal delivered its decision on 23 March 2025. The Tribunal accepted that the Appellant had financial responsibilities in Bangladesh but found that those problems would not result in him having a well-founded fear of persecution for a Convention reason. Also, those problems did not invoke Nauru's protection obligations. He was therefore found not to be a refugee and not to be owed complementary protection.

### **GROUND OF APPEAL - PARTICULAR (A) – NEVER FORMALLY JOINED THE BNP**

#### *The Findings and Evidence*

15. The Appellant's sole ground of appeal is that the Tribunal misunderstood or misconstrued the evidence before it. That misunderstanding or misconstruction is said to arise in respect of three separate aspects of the evidence.
16. In respect of the first relevant aspect of the evidence, the Appellant argues that the Tribunal misunderstood or misconstrued the evidence in concluding at [52] that the Appellant "never formally joined the BNP". The Appellant submits that the evidence before the Tribunal was to the effect that he *was* a member of the BNP, but that at his level he was not required to fill out paperwork to become a member of the BNP.
17. The Appellant starts by taking the Court to the terms of paragraph [52] of the Tribunal Decision. Paragraph 52 falls under the heading "Assessment of the Evidence" and

forms that part of the decision where the Tribunal drew broad conclusions as to the assessment of the evidence before it.

18. Paragraph [52] of the Tribunal Decision is in the following terms:

[52] The [Appellant's] evidence was inconsistent regarding whether he gave a speech to BNP supporters. Although claiming he was a member to the RSD officer, his evidence to the Tribunal was that he never formally joined the BNP.

19. The relevant passage from the transcript of the hearing before the Tribunal commences on T9, line 1. It is in the following terms:

The Interpreter: The time when actually BNP went to the power, I was not a supporter of BNP, so I don't have much clear account of those record. The time when actually I joined BNP, it was 2013, as I mentioned to you previously.

Ms Boddison: Did you actually join them? Did you actually join and become a member of the party?

The Interpreter: In my area – local area, I just get involved in the groups who actually supporting BNP. In that, I got – I would say, like, I got involved in their activities. In that way, I got – slowly, slowly got involved and get into their party – into that – this party.

Ms Boddison: Why did not you join?

The Interpreter: Join means, is it registered?

Ms Boddison: Yes.

The Interpreter: Is that what you mean? Yeah. Okay. So basically, like, a – for the mayor [sic] supporter, just the normal general supporter, they do not need to fill up any paperworks to get – to join the party. So, if it is, like, a top level and the higher level positions, like, district level, if they get involved and we want to join, they have to fill up those paperworks and fill up those forms and something like that. So, in the area, just – we just go with the flow. That is how that basically, we just get involved in the politics.

Ms Boddison: All right. So . . .

The Interpreter: So we have – basically, like, in the local area, we have the clubhouse. We just go there, we just join them, sit together, have some discussions. In that way, we just – the low level supporters, we just get involved. We do

not have, like – basically, we do not have any sort of, like, paperwork to get done or something like that.

*Appellant's Submissions*

20. Mr Aleksov on behalf of the Appellant submitted that this passage from the transcript gives “a clear and unambiguous statement” that the Appellant joined the BNP. He said that for persons or members who join the BNP, there was no paperwork at his level.
21. Counsel for the Appellant accepted, in the course of oral argument, that paragraph [52] of the Tribunal Decision referred to the Appellant having never “*formally* joined” the BNP. But he submitted that the “whole point” of the Appellant’s evidence was that joining the BNP in his circumstances did not involve any kind of formality. In essence, the Appellant’s contention was that the Tribunal’s use of the expression “*formally* joined” was to misread the Appellant’s evidence.
22. Counsel for the Appellant submitted that to misconstrue or misunderstand the Appellant’s evidence when it went to such a matter of credit was tantamount to a failure to consider what the actual evidence was. In effect, it was a failure to conduct the review and a failure to afford procedural fairness.
23. In support of his case, the Appellant relied upon *NABE v Minister for Immigration and Multicultural and Indigenous Affairs (No 2)* (2004) 144 FCR 1. There, the Full Court of the Australian Federal Court (Black CJ, French, and Selway JJ) was required to consider the question of whether a factual error may amount to jurisdictional error. At [55], the Full Court observed:

Although the discussion in *S20* did not set any precise limit upon the scope of factual error which may amount to or indicate jurisdictional error there is, in the case of Refugee Review Tribunal Decisions, one circumstance in which it is clearly established that the absence of a finding of a relevant fact may amount to jurisdictional error. Where the Tribunal fails to make a finding on a ‘substantial, clearly articulated argument relying upon established facts’ that failure can amount to a failure to accord procedural fairness and a constructive failure to exercise jurisdiction: *Dranichnikov v Minister for Immigration and Multicultural and Indigenous Affairs* (2003) 77 ALJR 1088, at [24] per Gummow and Callinan JJ, Hayne J agreeing at [95].

24. At [63], the Full Court went on to say:

It is plain enough, in the light of *Dranichnikov*, that a failure by the Tribunal to deal with a claim raised by the evidence and the contentions before it which, if resolved in one way, would or could be dispositive of the review, can constitute a failure of procedural fairness or a failure to conduct the review required by the Act and thereby a jurisdictional error. It follows that if the Tribunal makes an error of fact in misunderstanding or misconstruing a claim advanced by the applicant and bases its conclusion in whole or in part upon the claim so misunderstood or misconstrued, its error is tantamount to a failure to consider the claim and on that basis can constitute jurisdictional error. The same may be true if a claim is raised by the evidence, albeit not expressly by

the applicant, and is misunderstood or misconstrued by the Tribunal. Every case must be considered according to its own circumstances. Error of fact, although amounting to misconstruction of an applicant's claim, may be of no consequence to the outcome. It may be 'subsumed in findings of greater generality or because there is a factual premise upon which [the] contention rests which has been rejected': *Applicant WAEE* (at [47]). But as the Full Court said in *WAEE* (at [45]):

If the Tribunal fails to consider a contention that the applicant fears persecution for a particular reason which, if accepted, would justify concluding that the applicant has satisfied the relevant criterion, and if that contention is supported by probative material, the Tribunal will have failed in discharge of its duty, imposed by s.414 to conduct a review of the decision. This is a matter of substance, not a matter of the form of the Tribunal's published reasons for decision.

25. The Appellant ultimately submitted that where the Tribunal misunderstands or misconstrues something which is important, whether it is evidence or a submission, and it is significant to the outcome, then the misunderstanding constitutes a failure to consider the evidence or claims as actually put forward which amounts to an error of law.

#### *Republic's Submissions*

26. Mr O'Shannessy on behalf of the Republic submitted that the word "formally" in paragraph [52] of the Tribunal Decision is important. That is because the evidence before the Tribunal created the possibility of a distinction between "formally joining" and "informally joining" the BNP. He submits that this distinction comes through in the evidence on the question of whether the Appellant was a member of the BNP. In other words, the Tribunal used the word "formally" to be very careful to make clear it was referring to any suggestion that the Appellant may be a member, which is to say that he informally joined the party, or that he was a supporter, having informally joined.
27. In written submissions dated 7 August 2024 (Court Book p 41) made to the Secretary, the representative for the Appellant submitted that:

...the [Appellant] was an active Bangladesh National Party (BNP) member throughout his union ... and a dedicated follower of the local union president  
...
28. At Court Book page 51, the same document from the Appellant's representative recorded the applicant to be a "BNP member."
29. By submissions made to the Tribunal dated 21 January 2025 by the Appellant's representative, he was described as a "supporter" of the BNP: see page 79 of the Court Book. This was in the context of the Secretary having found that the Appellant was *not* a member of the BNP but instead was a low-level supporter: Court Book pp 60-61.

30. In his updated statement to the Tribunal, the Appellant described himself in paragraph 2 as “a supporter of the BNP”: see page 95 Court Book. The Republic submits that the Appellant clearly set up his own distinction between a higher-level membership that requires paperwork and filling in forms, and a more local area-based membership where, consistent with the submissions on behalf of the Republic, “they just go with the flow and there are no forms.”
31. The Republic accepts that in respect of this aspect of the appeal (as well as the two other aspects considered below), the Tribunal’s reasons are critical to the decision, going, as they do, to the Appellant’s credibility.

#### *Consideration*

32. The Appellant will establish an error of law if the Tribunal failed to consider a contention in a manner tantamount to a failure to consider the claim that he advances: *NABE (supra)* at [55], [63], adopted in this jurisdiction in cases such as *TTY 167 v Republic of Nauru* [2022] NRSC 30 at [73]-[76]; *QLN 107 v Republic of Nauru* [2018] NRSC 23 at [47]-[52].
33. The Appellant has not persuaded me either that there was an error of fact, or, if there was an error of fact, that it was such as to amount to an error of law because of a failure to consider the Appellant’s claims.
34. The Tribunal’s conclusion that the Appellant’s evidence to the Tribunal was that he never “formally” joined the BNP was not in error. That conclusion is, it seems to me, well open based on the material before the Tribunal. It is consistent with the evidence recorded in the transcript. In particular, the Appellant’s statement that:

So basically, like, a – for the mayor [*scil* major] supporter, just the normal general supporter, they do not need to fill up any paperworks to get – to join the party. So, if it is, like, a top level and the higher level positions, like, district level, if they get involved and we want to join, they have to fill up those paperworks and fill up those forms and something like that. So, in the area, just – we just go with the flow. That is how that basically, we just get involved in the politics
35. The Tribunal’s use of the word “formally” in my view, is entirely consistent with the Appellant’s evidence. It is also consistent with not just the transcript of the hearing before the Tribunal, but also consistent with the Appellant’s submissions and written statement to the Tribunal as set out above. Thus, no error on the part of the Tribunal is made out.

### **GROUND OF APPEAL – PARTICULAR (B) – THE SPEECH AT THE MARKET**

#### *The Findings and Evidence*

36. The second way in which the Appellant contends that the Tribunal misunderstood or misconstrued the evidence relates to the Tribunal Decision at [53]. The paragraph is in these terms:

[53] In his review statement, the [Appellant] said that it was incorrect that he had made a political speech at the market as he made the speech at the local

BNP meeting room. In his written response to the RSD officer, he clearly stated he gave the speech at the market. When asked about this at the Tribunal hearing, he could not remember giving a speech at the market or the BNP meeting room. This is a significant event to forget if it was an event that triggered the extortion demands.

37. The Appellant then drew the Court's attention to the relevant parts of the transcript of the hearing before the Tribunal. At T9, starting at line 25, the following passage appears:

Ms Boddison: So in, say, the four years before you left Bangladesh, what things did you do? What political activities were you involved in?

The Interpreter: Sorry. Four years before he left?

Ms Boddison: Before he left, yeah.

The Interpreter: Yeah. Participating in the processions, meetings and discussions of the developmental activities he used to participate. And helping the poor people in the area. We just go and contribute and just helping them. That's the type of activities we get involved for BNP.

Ms Boddison: So, the – were the meetings held at the clubhouse?

The Interpreter: In the clubhouse, the meeting.

Ms Boddison: And roughly how often did you have meetings there?

The Interpreter: Say, twice or thrice in a week.

Ms Boddison: Did you give any speeches at any meetings?

The Interpreter: So it's just like a brainstorming, what we can do, like, to get out of this situation or just, like, to help others through this – sort of like, we participate in the discussions, and we just generally put our ideas on the table or something like that in the discussions. So, it was taken into account in the group. So that's how it worked.

Ms Boddison: Okay. And did you do that very often?

The Interpreter: So basically, like – yes, most of the occasions, I was – I took part in the discussions, I took – try to generate my ideas in the discussions in the tables. This – there are some occasions that I missed out. In those days, yes, it – in that way, I just – missed out some of it. And most of the time, yes, I did participate.

Ms Boddison: Did you ever give a speech at the market?

The Interpreter: Market?

Ms Boddison: Market.

The Interpreter: I did – okay. Yeah. I did not need to give any speech in the big market meeting or some procession or something like that. I never need to do that. But, yes, I did participate. I went there – and I just went there and just. . .

Ms Boddison: And we are going to come to the fact that they were – the Awami League were asking you for money. But apart from asking you for money, did you have any other problem with Awami League supporters?

38. At T12 of the transcript, the following passage appears:

Ms Boddison: And I just want to clarify, the clubhouse you talked about, was that at the market?

The Interpreter: It is one and a half kilometres away from my village home, so it is not in the big market, the – it’s one and a half kilometres away, there is a small market area, there this clubhouse is located.

*Appellant’s Submissions*

39. Counsel for the Appellant draws particular attention to Ms Boddison’s direct question asking whether the Appellant ever gave a speech at the market. After some clarification, he says, “I did”. The Appellant then goes on to say that he did not need to give any speech in the big market meeting, but he did participate.
40. Mr Aleksov for the Appellant submitted that it was “extremely clear” that the Appellant responded that he *did* give a speech at the market and then what he later also said was that he did not need to give any speech in the big market meeting.
41. The Appellant accepts that the Tribunal might have become confused by the Appellant saying that he did not need to give any speech in the big market meeting, but that does not excuse the Tribunal ignoring the direct answer that he did give a speech in the market. The Appellant submits that I must give effect to the unambiguous statement by the Appellant that he did give a speech at the market, which is the opposite of what the Tribunal believed was the effect of his evidence in paragraph [53] of the Tribunal Decision.
42. As to whether this error amounts to a legal error, the Appellant submits that it is “plainly so”, given that the Tribunal found at [53] that this was a “significant event to forget if it was an event that triggered the extortion demands.” The Tribunal treated this evidence as of particular importance.

*Republic's Submissions*

43. Mr O'Shannessy on behalf of the Republic took me through the evidence that demonstrated the evolving nature of the Appellant's case in this regard.
44. On 4 August 2024, the RSD officer wrote a letter to the Appellant's representative requesting further information. This occurred after the RSD interview had occurred. On page 37 of the Court Book, that letter said:

The [Appellant] stated he was an activist and party worker in his union area. The [Appellant] mentioned giving a speech on one occasion in the market some weeks before physically departing Bangladesh. This was the only specific BNP-related activity that the [Appellant] described during the RSD interview. The [Appellant] did particulars [sic] as to what work was involved when asked about the [Appellant's] roles and functions relating to the BNP. The [Appellant], despite questions as to political involvement, did not identify or refer to any particular political or social views or knowledge held for which the [Appellant] is or is to be persecuted. The [Appellant] did not identify why the [Appellant] is involved with the BNP, in the circumstance where the [Appellant] claims that that involvement has caused adversity.

45. In response to this request for further information, the Appellant's representative provided a written response dated 7 August 2024. At page 42 of the Court Book, the following relevant passage appears in response to this request for further information from the RSD officer:

With respect to the speech the [Appellant] gave in the market before leaving Bangladesh, the [Appellant] confirms that he lectured on the importance of the safety of family and how, as a community, they can improve as a party. The [Appellant] believes that improvements are needed in his village in terms of schooling and for the safety of families.

46. The Secretary made the following finding in the Secretary's determination dated 27 September 2024 and which is to be found on pages 60-61 of the appeal book:

The [Appellant] claimed he was an activist and party worker in his union area, and gave a speech at the market. At his interview, the [Appellant] could not elaborate on the content of the speech he gave, nor the circumstances that led to him making the speech. The [Appellant], through his representative, gave further details about the speech, claiming that '*he lectured on the importance of the safety of family and how, as a community, they can improve as a party.*' Whilst this is more detail that [sic] the [Appellant] could provide at the interview, it is assumed that a debut political speech in public requires some forethought which could be recalled in greater detail than the vague notion of 'safety of family' and therefore it is not accepted that the [Appellant] was an activist, party work [sic] or gave a speech on behalf of the BNP. It is determined that the applicant was a low-level supporter who occasionally engaged in some fundraising and distribution of leaflets.

47. By letter dated 21 January 2025, the Appellant's lawyers provided a submission to the Tribunal and attached a further statement made by the Appellant. In the letter of

submissions, the representatives dealt with the issue of the Appellant's speech and the specific findings of the Secretary, which I have set out above. The submissions proceeded in these terms at pages 83–84 of the Court Book:

[32] The reasoning adopted by the Secretary in not accepting that the [Appellant] was an '*activist, party work[er] or gave a speech on behalf of the BNP*' amounts to nothing more than conjecture or pure speculation, a species of perfunctory reasoning which discloses an error of law.

[33] Alternatively, there is no probative evidence that was before the Secretary which could have placed the Secretary in a position to evaluate what level of detail would be expected in a speech given by a Bengali man living [where he did] ...who was only educated to grade seven and whose only occupation has been in construction. If this Tribunal follows a similar path of reasoning, it will also fall into error on this basis.

48. In the Appellant's further statement to the Tribunal dated 20 January 2025, he states at paragraph [17]:

The Decision Record also says that I made a political speech in the market. This is not correct. I made the speech at the local BNP Meeting Room to BNP supporters.

49. In light of that background, counsel for the Republic then took me again to the transcript of the hearing before the Tribunal. In essence, contrary to the submissions of the Appellant, the Republic submits that the Appellant's answer to the question whether he gave any speeches at meetings was "an around about way of saying no". The Republic resists the submission that the words "I did" at the start of the answer to Ms Boddison's question as to whether the Appellant gave any speeches at any meeting is a complete answer to the question. The Republic submits that taking the *whole* answer into account and not just the initial words, that suggests that the answer is not in the clear terms submitted by the Appellant. The Republic resists the Appellant's submission that the transcript demonstrates that the Appellant asserted that he ever gave a speech at the market.

### *Consideration*

50. A review of the documents which I have set out above demonstrates that there is marked inconsistency at various times in the RSD and Tribunal process between the positions taken by the Appellant as to whether he gave a speech at a market or at a local BNP meeting room. No doubt this distinct lack of clarity is what drove the Tribunal to make enquiries about the matter as I have set out above.
51. The Appellant was asked by the Tribunal whether he gave any speeches *at any meetings*. His answer was to the effect that it was "just like a brainstorming." Certainly this answer is not suggestive of him having given any speeches to any meetings, rather than simply participating in "brainstorming" sessions.
52. As to whether a speech was ever given *at the market*, in my view, the answer to that direct question that started with "I did" needs to be read in the context of the entirety of that answer. When reading the entire paragraph response, it is apparent that the

Appellant indicated that he did “not need” to give any speech in the big market meeting. The reference to “big market” was later considered at T12, which appears to be a market about one and a half kilometres away from where the clubhouse is located.

53. I also note that in his statement to the Tribunal, the Appellant stated that he did *not* make a political speech in the market, but instead made a speech at the local BNP meeting room. As I have already noted, when asked about that by the Tribunal he instead responded to the effect that he was involved in “just like a brainstorming”.
54. I am not persuaded that the Tribunal erred in reaching the factual conclusion that it did in paragraph [53]. It is not appropriate to focus merely on the single statement “I did” in the transcript of the hearing before the Tribunal without also considering the balance of the evidence. In particular, the evidence which the Appellant then went on to say about not needing to give a speech at the market. Having regard to the evidence as a whole, I am unable to conclude that there was any factual error. In any event, if there was a factual error, then it was not give rise to a point of law.
55. The Appellant has failed to make out this aspect of the ground of appeal.

#### **GROUND OF APPEAL – PARTICULAR (C) – FAILING TO VOTE**

##### *The Findings and Evidence*

56. The third aspect of the Appellant’s amended notice of appeal is a contention that paragraph [55] of the Tribunal Decision involves an error in that the Tribunal found that the Appellant had failed to vote in elections for the BNP, which was inconsistent with his claims to BNP support. However, the Appellant contends that his failure to vote was explained because voting booths were blocked by the AL.
57. Paragraph [55] of the Tribunal Decision is in the following terms:

The Tribunal finds that in his written response to the RSD officer, the [Appellant] exaggerated his involvement, he was not a member. Due to the vague nature of his evidence at the hearing, the Tribunal does not accept that he went everywhere with the union president and was a BNP supporter in a public way. The Tribunal accepts that the union president may have been arrested on false charges, but this has had no effect on the [Appellant] and will not in the future. The Tribunal does not accept that he regularly attended meetings at the BNP meeting room. The Tribunal would have expected him to have voted in elections and be more aware of political developments if he was this involved with the party. The Tribunal accepts that he voted for the BNP on one occasion and that he favoured the BNP.

58. This issue was dealt with in two places in the transcript of the hearing before the Tribunal. At T8, commencing at line 17, the following passage appears:

Ms Boddison: Did you vote for the BNP?

The Interpreter: Yes, I did.

Ms Boddison: And so which elections did you vote for them, do you remember?

The Interpreter: 2000. Only once I've . . .

Ms Boddison: But. . .

The Interpreter: . . . voted for . . .

Ms Boddison: You've only voted in 2000. What – and that includes the national elections and the local elections?

The Interpreter: It's a local election.

Ms Boddison: In 2000?

The Interpreter: Local.

Ms Boddison: So why have you only voted in that election?

The Interpreter: I didn't get any opportunity to go.

Ms Boddison: What do you mean by that?

The Interpreter: Okay. Actually, they prevent – Awami League actually prevented BNP supporters to – we are not allowing them to go and cast their vote. They are actually preventing them. Around, like, 50 to 60% of BNP supporters were not allowed to go and vote for BNP because Awami League stopping them – were stopping them.”

59. At T13, the following passage appears:

“Ms Boddison: . . . you said you voted in the 2000 elections. I was just wondering why you didn't vote in the 2008 elections?

The Interpreter: It's 2008, yeah?

Ms Boddison: Yeah.

The Interpreter: Okay. Yeah. The – our local vote centre is located in a Madrassa, it's a religious school, Islamic religious school. We call them Madrassa. This – the vote centre is located over there. We were not allowed to enter; we didn't have that access to that vote centre due to that pressure from Awami League supporters. They didn't allow us to go there, that's why we couldn't vote.”

### *Appellant's Submissions*

60. Counsel for the Appellant submitted that it was “curious in the extreme” that paragraph [55] of the Tribunal Decision says that the Tribunal would have expected him to have voted in elections. The Tribunal accepted that he voted for the BNP on one occasion, and effectively seems to be saying that it would have expected him to have voted for the BNP on other occasions.
61. The Tribunal noted at [32] that the Appellant had only ever voted in one election and said that the AL prevented him from voting further when they were in power. Counsel for the Appellant describes it as “astonishing” that despite having identified that the Appellant made specific claims that he had wished to do so but was prevented from doing so by his political opponents, there was no discussion by the Tribunal as to whether it accepted his evidence to that effect. Although the Tribunal cannot be said to have completely ignored the evidence, it did not consider the evidence in the sense of having given it active intellectual engagement because it found that his lack of voting was probative against him, but it did not confront his explanation for why there was a lack of voting for the BNP.
62. In reply, counsel for the Appellant pointed to the decision in *Applicant WAEE v Minister for Immigration and Multicultural and Indigenous Affairs* (2003) 256 FCR 593 at [46] and [47]. Applying a “common sense, practical approach”, counsel for the Appellant submitted that what was required in this case was more than simply an awareness of the existence of the evidence adverted to in [32] of the Tribunal Decision. To “consider evidence” requires active intellectual engagement with the significance of that evidence for the case.

### *Republic's Submissions*

63. The Republic submits that the Tribunal Decision ought to be read beneficially and without an eye keenly attuned to the perception of error. The Tribunal clearly was aware of the evidence about the AL restricting the BNP supporters from voting in support of the BNP. So much is expressly referred to at [32] of the Tribunal Decision.
64. I am invited by the Republic to infer that the Tribunal implicitly rejected that explanation in light of the terms of paragraph [55] of the Tribunal Decision. The Republic submits that I would not infer that the Tribunal omitted to consider the matter given its express reference in paragraph [32].

### *Consideration*

65. The Tribunal was aware of the evidence given by the Appellant about the impact of AL supporters preventing voting and had regard to that evidence. That evidence is expressly referred to in [32] of the Tribunal Decision.
66. The Appellant submits that the Tribunal recording that this evidence was given is not sufficient to indicate that the Tribunal actively intellectually engaged with this evidence.
67. However, reading [55] of the Tribunal Decision in its entirety, it is apparent that the Tribunal was talking in compendious terms, not only about voting in elections but is

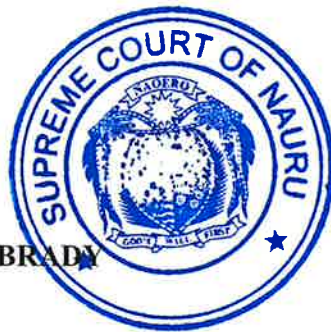
making findings about the Appellant's awareness of political developments given his contentions about his close involvement with the party. I am not persuaded that the Tribunal failed to engage with this evidence noted at [32]. Instead, it is apparent that the Tribunal rejected the explanation offered by the Appellant in this regard. Having regard to the overall findings about the Appellant's lack of awareness of political developments, and having regard to his voting record, the Tribunal did not accept the full extent of his involvement in the BNP.

68. I am not persuaded that the Tribunal erred in reaching the factual conclusions that it did in paragraph [55]. No error of fact is made out. In any event, any error of fact (if there was one) is not such as to give rise to a point of law for the purposes of an appeal to this Court.

### CONCLUSION

69. For the reasons I have set out, the Appellant has failed in respect of his ground of appeal in respect of each of the three particulars identified. The Appellant has failed to make out his contention that the Tribunal misunderstood or misconstrued the evidence before it in such a way as to amount to an error of law. Accordingly, the appeal is dismissed.
70. Pursuant to s.44(1) of the Act, I make an order affirming the Tribunal Decision. I make no order as to the cost of the appeal.

**JUSTICE MATTHEW BRADY**



19 November 2025