



IN THE SUPREME COURT OF NAURU
AT YAREN

Appeal No. 24 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:

AX25

Appellant

AND:

REPUBLIC OF NAURU

Respondent

Before: Brady J

Dates of Hearing: 12 August 2025

Date of Judgment: 19 November 2025

Citation: *AX25 v Republic of Nauru*

CATCHWORDS:

APPEAL - Refugees – Refugee Status Review Tribunal – Whether the Tribunal could not proceed without a hearing, as the letter of 9 January 2025 was not the required consent to proceed without a hearing – Whether the Appellant did not consent to proceeding without a hearing - Whether the Tribunal’s finding is irrational, or amounts to a failure to take account of the actual evidence of the Appellant at the RSD interview, or amounts to procedural unfairness in the making of a finding that was not reasonably open on the known material Appeal Dismissed

LEGISLATION:

Refugees Convention Act 2012 (Nr), s.40, 43, 44

CASE AUTHORITIES:

AN25 v The Republic [2025] NRSC 46, Hicks v Minister for Immigration and Multicultural and Indigenous Affairs [2003] FCA 757, Mustac v Medical Board of Western Australia [2007] WASCA 128

APPEARANCES:

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

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

REASONS FOR JUDGMENT

INTRODUCTION

1. The Appellant is a national of Bangladesh. On 26 June 2024, he made an application to be recognised as a refugee or as a person owed complementary protection.
2. The Appellant claims to fear persecution arising out of his actual and/or imputed political opinion as a supporter of the Bangladesh Nationalist Party (BNP) and the youth wing of the BNP. He also claims to fear persecution arising out of his membership of a particular social group, namely supporters of a particular identified BNP politician. He fears persecution arising out of harm by political groups who oppose the BNP, particularly the Awami League (AL). The Appellant contends that the authorities of Bangladesh will not afford him protection and there is nowhere in Bangladesh where he could reside in safety.

3. Pursuant to s.43 of the *Refugees Convention Act 2012* (Nr) (**the Act**), the Appellant appeals from a decision of the Refugee Status Tribunal (**Tribunal**) made on 17 April 2025 (**Tribunal Decision**). The Tribunal affirmed a determination of the Acting Secretary of the Department of Multicultural Affairs (**Secretary**) dated 28 August 2024 (**Secretary's Decision**). The Secretary decided not to recognise the Appellant as a refugee under the Act and found that the Appellant was 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 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. An Amended Notice of Appeal was filed on 11 July 2025. By that document, the Appellant raises the following grounds of appeal:
 - (1) The Tribunal could not proceed without a hearing, as the letter of 9 January 2025 was not the required consent to proceed without a hearing.
 - (2) In fact, the Appellant did not consent to proceeding without a hearing.
 - (3) The Tribunal finding at reasons [93] is irrational, or amounts to a failure to take account of the actual evidence of the Appellant at the RSD interview, or amounts to procedural unfairness in the making of a finding that was not reasonably open on the known material (here, the RSD interview) in that the RSD interviewer never asked the Appellant about *why* his shop was attacked.

PROCEDURAL HISTORY

7. The Appellant arrived in Australia in May 2024. On 1 June 2024, he was transferred to Nauru pursuant to the memorandum of understanding between the governments of Nauru and Australia. On 26 June 2024, the Appellant made an application for Refugee Status Determination (**RSD**).
8. The Secretary's Decision was made on 28 August 2024. The Appellant applied to the Tribunal for review of that decision on 5 September 2024.
9. The Appellant provided an updated statement and submissions to the Tribunal on 1 November 2024. The Tribunal conducted a hearing on 5 November 2024.
10. After the Tribunal hearing, Ms Boddison, the principal member of the Tribunal, wrote a letter to the Appellant's solicitor (sent by email) dated 4 December 2024. I consider the detail of that correspondence, and later correspondence, below.
11. The Tribunal Decision was delivered on 17 April 2025.

12. The Appellant filed a Notice of Appeal in this Court from the Tribunal Decision on 5 May 2025. In addition to the court book in this matter, the Appellant also relies upon two affidavits of Ms Prasad of Craddock Murray Neumann. The first affidavit was filed 14 July 2025. The second affidavit was filed on 12 August 2025.
13. The parties filed their respective outlines of submissions prior to the hearing of the appeal in this matter on 12 August 2025. I heard this appeal in conjunction with the appeals in AP25 and AQ25 given the overlap in appeal grounds in each of those appeals.

FIRST GROUND OF APPEAL – SECTION 40(1) OF THE ACT

14. The following paragraphs dealing with the first ground of appeal are substantially replicated in my discussion of the same ground of appeal in the reasons for judgment in the matters of AP25 and AQ25.
15. The first ground of appeal in this case alleges that the Tribunal failed to adopt the mandatory procedure set out in s.40(1) of the Act. It is convenient here to set out the relevant parts of s.40:

40. Tribunal Shall Invite Applicant to Appear

- (1) The Tribunal shall invite the applicant to appear before the Tribunal to give evidence and present arguments relating to the issues arising in relation to the determination or decision under review.
- (2) (1) does not apply if:
 - (a) the Tribunal considers that it should decide the review in the Applicant's favour on the basis of the material before it; or
 - (b) the applicant consents to the Tribunal deciding the review without the applicant appearing before it.

Relevant Evidence

16. As I have noted above, the Appellant was interviewed by the then-constituted Tribunal on 5 November 2024.
17. On 4 December 2024, the Principal Member of the Tribunal, Ms Boddison, sent an email to Ms Prasad of Craddock Murray Neumann (CMN), the Appellant's representative. That email attached a letter which was relevantly in the following terms:

I have become aware that for the sittings conducted from 30 October to 6 November 2024, the Tribunal was not constituted in accordance with the *Refugees Convention Act 2012* (the Act).

This sitting involved the following Applicants:

...

925-009 [being the boat number of the Appellant]

...

These cases will be reconstituted to a new Tribunal. It is envisaged that the cases will be constituted to two of the members from the original Tribunal with a third new Member.

Could you please advise whether these applicants:

1. wish to be invited to a hearing with the newly constituted Tribunal or whether they consent to the newly constituted Tribunal relying on the evidence they have given at the previous hearing and if this is the case, whether the applicant's consent to the Tribunal deciding the review without the applicant appearing before it pursuant to s.40(2)(b) of the Act.

Or

2. The applicants wish to be invited to and participate in a new hearing.

18. On 5 December 2024, Ms Prasad responded to the Principal Member advising that she would seek instructions and revert.
19. Ms Boddison responded the same day, 5 December 2024, by email advising Ms Prasad that Dr O'Connell had not been appointed in accordance with s.13(2) of the Act and accordingly the Principal Member had formed the view that his appointment to the Tribunal was not valid. Hence, the cases would need to be reconstituted with a new presiding member.
20. On 27 December 2024, Ms Prasad responded by email to the Principal Member advising:

We have received instructions from our clients and confirm the following:

1. ...95-009... would not like to proceed with a new hearing. However, if the reconstituted Tribunal is not satisfied on credibility or otherwise has any adverse concerns, it should exercise its discretion positively under 7(1)(a)(iii) and (vi) of the Act to request further information or have certain information verified by way of statutory declaration (which covers the situation where evidence on a certain matter was not explored orally at hearing).

...

Please do let me know if you require any further clarification in relation to the above.

21. On 3 January 2025, Ms Temaki, the Tribunal Registrar, emailed Ms Prasad with a letter of the same date. The letter was relevantly in the following terms:

I refer to the correspondence of 4 December 2024 and your response dated 27 December 2024.

Could you please confirm that all applicants consent to the reconstituted Tribunal relying on the evidence they have given at the previous hearing.

...

Could you also confirm that all applicants consent to the reconstituted Tribunal deciding the review without the applicant appearing before it pursuant to s.40(2)(b) of the Act. If the applicants do not consent, they will be invited to a further hearing.

Could you please provide your response by 10 January 2025.

22. On 9 January 2025, Mr Zhang of CMN sent an email in response to Ms Temaki. The response was relevantly in these terms:

1. We refer to your letter dated 3 January 2025 regarding the reconstitution of matters which we are instructed to act in and referred to above.

2. Subject to the qualifications at [3]-[5] hereof, the applicants (forthwith, **the Applicants**) assigned the following NOM IDs are *generally* agreeable to the Tribunal promulgating a decision in accordance with s.40(2)(b) of the *Refugees Convention Act 2012* (Nr) (**the Act**) without further appearance from the Applicants:

...

(d) 925-009;

...

3. Whilst the applicants do not oppose the Tribunal relying on the evidence already proffered as a matter of *general* principle, they maintain that depending on the circumstances of each case, there may be an obligation on the Tribunal to exercise certain discretionary powers to ensure that the applicants have been provided a meaningful opportunity to present their case, whether that be in the interests of ensuring procedural fairness and/or natural justice and/or legal reasonableness.

4. The gravamen of this submission was advanced at paragraph [1] of email correspondence from Ms Neha Prasad of our office to the Tribunal dated 27 December 2024. Specifically, it is the applicants' position that if the Tribunal is not positively satisfied on credibility or otherwise has any adverse concerns, the discretionary powers conferred under s.7(1)(a)(iii), 7(1)(a) (v) and 7(1)(a) (vi) and 7(1)(b) of the Act become relevant for the purposes of promulgating a decision. The conferral of these statutory powers allows the Tribunal to request further information or have further information verified by way of statutory declaration (which deals with the situation where

evidence on a certain matter was not satisfactorily explored orally at hearing).

5. For the avoidance of doubt, where adverse concerns are a reason or part of a reason for promulgating a decision which affirms the determinations made by the Secretary, the Applicants request notice of such concerns and an opportunity to comment and/or file submissions on such concerns in accordance with well-established legal principles about procedural fairness and/or natural justice and/or legal reasonableness.

Relevant parts of the Tribunal Decision

23. The Tribunal Decision was delivered on 17 April 2025. The following passage appears from paragraph [5]:

[5] After the hearing, it came to the Tribunal’s attention that the Tribunal had not been constituted at the hearing on 5 November 2024 in accordance with the *Refugees Convention Act 2012*.

[6] Accordingly, on 4 December 2024 the Principal Member wrote to the representative advising of this and whether in these circumstances a further hearing with a newly constituted Tribunal was sought.

[7] On 3 January 2025, the Tribunal Registrar wrote to the applicant’s representative seeking clarification as to whether the applicant wished to be invited to a further hearing with a newly constituted Tribunal or whether he consented to the Tribunal deciding the review without appearing before it, pursuant to section 40(2)(b) of the Act..

[8] On 9 January 2025 the applicant’s representative replied that the applicant does not oppose the Tribunal relying on evidence already provided and is agreeable to proceeding to a decision without a further hearing, pursuant to section 40(2)(b) of the Act, on the understanding that the Tribunal considered the applicant had been provided a meaningful opportunity to present his case.

The Appellant’s Submissions

24. In his written submissions, counsel for the Appellant argues that the 9 January 2025 letter from CMN does not amount to the “consent” required in order to trigger the application of s.40(2)(b) of the Act. He describes the representative’s expression as being “sub-optimal”, but that the substance of what was conveyed was that the Appellant consented to proceed without a further hearing, but only if the Tribunal informed him in writing of any adverse issues, as to credit or otherwise, and gave him an opportunity to put further written evidence or material before the Tribunal on that issue.
25. In that sense, the Appellant submits that he was not giving consent to proceeding without a hearing for the purposes of s.40(2)(b) because he was giving *conditional consent* to that course. It could not be said that “the applicant consents to the Tribunal deciding the review without the applicant appearing before it”, being the words of

s.40(2)(b) of the Act, because such “consent” as was given was not consent to the unqualified proposition in s.40(2)(b). It was consent to a different position, which does not match the statutory language required of s.40(2)(b) so as to trigger the operation of the chapeau of s.40(2) so that subsection 40(1) does not apply.

26. By the time of the hearing of the appeal before me on 12 August 2025, Freckelton J of this Court had delivered a decision in *AN25 v The Republic* [2025] NRSC 46 on 8 August 2025.

27. In that case, the same argument was put concerning the question of whether the “consent” required by s.40(2)(b) had been given. Indeed, the Appellant in that case was also named in the same correspondence that I have set out above at paragraphs [14], [17], [18] and [19]. Effectively, the Appellant in *AN25* was in precisely the same factual position concerning the correspondence with the Tribunal as is the Appellant in this case.

28. Having set out the detail of the communications, Freckelton J referred to the correspondence of 3 January 2025 from the Tribunal. His Honour then dealt with this correspondence as follows:

[55] The communication from the Tribunal was clear in its meaning, which consisted of asking whether the Appellant consented to the Tribunal determining the review without his appearance but preserving the entitlement to personal appearance if the Appellant did not agree to that course.

[56] The situation was clarified by the response of Mr Zhang of Craddock Murray Neumann Lawyers Pty Ltd on 9 January 2025. His response was that the Appellant (and others) was “generally agreeable” to the Tribunal proceeding to a decision in accordance with s.40(2)(b) “without further appearance from the applicants”. It is correct that the expression “generally agreeable” was infelicitous but, in my view the consent provided was not qualified or contingent by reason of the fact that he continued in succeeding paragraphs to negotiate about other matters. He did not do so in a way which was phrased as affecting the provision of s.40(2)(b) consent.

[57] I find that the procedure of the Tribunal conformed with what is required by s.40(2)(b) and the consent provided on behalf of the Appellant was sufficiently clear to be regarded as constituting substantive consent to not being invited. It had the consequence that the obligation of the Tribunal under s.40(1) to invite him formally to appear before the reconstituted Tribunal did not apply.

29. His Honour therefore rejected this ground of appeal.

30. Mr Aleksov for the Appellant argued that the decision in *AN25* does not resolve any questions of law. All that it decided is a factual issue. He submitted that the decision does not carry the weight of authority before me, and I am not bound by it. I was invited by the Appellant to give effect to my own view about the evidence, without affording deference in a formal sense to the view expressed by Freckelton J in *AN25*.

31. If the Appellant's submissions in that regard were not accepted and I found that the decision in *AN25* ought to be followed, Mr Aleksov conceded that his Honour's decision was not "clearly wrong" and that I would follow it, whatever my views about the correctness of the Appellant's argument.
32. The Appellant's counsel accepts that the instructions conveyed by CMN ought to have been conveyed more clearly. However, what was being expressed was that the Appellant would not like to proceed with a new hearing but he wanted to be invited to answer any adverse credit concerns in writing. The use of the expression "on the condition" in the 9 January 2025 correspondence makes the position clear, on the Appellant's case.
33. The Appellant submits that his consent to the Tribunal deciding the review without requiring the applicant to appear before it must be unqualified. If there is "murkiness or muddiness or a lack of clarity about whether an applicant has consented to that unqualified proposition", then the requirement of consent for the purposes of s.40(2)(b) has not been met. In effect, the argument is a simple one, that on a proper construction of the correspondence from CMN, s.40(2)(b) was not complied with because no unconditional consent was given.

The Republic's Submissions

34. The Republic submits that the responses given in writing by Ms Prasad, and then subsequently by Mr Zhang, on behalf of the Appellant, constituted the requisite consent for the purposes of s.40(2)(b) of the Act. The concept of "conditional consent" is not established on the facts of the communications viewed in a holistic context. In particular, the Republic submitted that it is not open to conclude that the Appellant reserved his rights to have a hearing, contrary to the general agreement so conveyed, if (and only if) the Tribunal informed the Appellant in writing that it did not have any adverse issues as to credit or otherwise, and that if it did, he would be given an opportunity to put on further written material. In reality, the Republic submits that the communications were a submission as to the potential exercise of statutory powers of information gathering.
35. The Republic accepts that this Court is not bound by what Freckelton J said in *AN25*. However, the situation of having two different factual findings from two different judges of this Court on precisely the same set of facts (involving precisely the same correspondence) would be undesirable.
36. My attention was drawn to the decision of the Australian Federal Court in *Hicks v Minister for Immigration and Multicultural and Indigenous Affairs* [2003] FCA 757. French J (as his Honour was before his appointment to the High Court) noted that it is well established that a judge of the Federal Court of Australia should follow an earlier decision of another judge unless of the view that it is plainly wrong. His Honour cites a number of authorities for that proposition which I will not include here. His Honour also sets out an extract from the decision of Burchett J in *La Macchia v Minister for Primary Industries and Energy* (1992) 110 ALR 201 at 204 where His Honour said:

The doctrine of *stare decisis* does not, of course, compel the conclusion that a judge must always follow a decision of another judge of the same Court. Even

a decision of a single justice of the High Court exercising original jurisdiction, while “deserving of the closest and respectful consideration” does not make that demand upon a judge of this Court... But the practice in England, and I think also in Australia, is that “a judge of first instance will, as a matter of judicial comity, usually follow the decision of another judge of first instance unless he is convinced that the judgement was wrong...” The word “usually” indicates that the approach required is a flexible one, and the authorities illustrate that its application may be influenced, either towards or away from an acceptance of the earlier decision, by circumstances so various as to be difficult to comprehend within a single concise formulation of principle...

37. As French J went on to note, the requirements of judicial comity are not merely to advance mutual politeness as between judges, but also to uphold the authority of the Courts and confidence in the law by the value it places upon consistency in judicial decision making.
38. The Republic also drew my attention to authorities to the effect that considerations of judicial comity have no operation in relation to findings of pure fact. In *Mustac v Medical Board of Western Australia* [2007] WASCA 128, the Western Australia Court of Appeal referred to various authorities which do not support the proposition that the considerations of judicial comity extend to issues of fact: see [45] of that decision. That is also supported by comments of Street J in *Bond v Hale* (1969) 89 WN (NSW) (Part 1) 404.
39. The Republic submitted that, ultimately, considerations of judicial comity come down to supporting certainty in the application of the law. It would be undesirable to have two different conclusions arising from precisely the same facts from two different judges of this Court.
40. Accordingly, although I am not bound to follow the decision of Freckelton J, I would usually follow his Honour’s decision unless I was convinced that he was wrong.
41. Mr O’Shannessy in his oral submissions noted that the “qualifications” contained in the 9 January 2025 letter from the Appellant’s representative do not relate to a further hearing. It is instead a plea to the Tribunal to comply with its existing statutory obligations to ensure that procedural fairness is met. Provided a meaningful opportunity to present his case is given, then the issue of whether an invitation is required under s.40(1) is fully disposed of by the response. The consent to proceed without a hearing was not itself conditional. Such consent was unconditional. To the extent that qualifications were made later in that correspondence, those matters related to asking the Tribunal to ensure that the requirements of procedural fairness were met. It was not an invitation to conduct a further hearing in the event that any concerns were to be raised in relation to the credit of the Appellant or otherwise.

Consideration

42. Because I have independently come to the same conclusion as Freckelton J in *AN25*, it is unnecessary for me to consider the detail of the authorities that address questions of judicial comity. His Honour’s conclusions in relation to this aspect of the appeal are precisely the same as the conclusions which I would otherwise have reached without

regard to his Honour's own conclusions. Accordingly, it is unnecessary to wade into questions as to what judicial comity might have required in the particular circumstances of this case.

43. I agree with the submissions of the Republic that the consent to proceed without a further hearing was not itself qualified. Whilst paragraph 2 of the 9 January 2025 letter does refer to the agreement to the Tribunal proceeding to a decision in accordance with s.40(2)(b) of the Act without further appearance from the Appellant as being "subject to the qualifications at [3]-[5] hereof", those qualifications are not in fact qualifications dealing with whether consent is given under s.40(2)(b). The "qualifications" did not amount to an indication that the Appellant would require a further hearing to be conducted if the Tribunal was not satisfied of the Appellant's credit or had any other "adverse concerns".
44. In other words, the Appellant's representative made it clear that no further hearing was required. What they did assert was that the Tribunal had an obligation to exercise certain identified discretionary information-gathering powers. However, the Appellant's representative said nothing to suggest that if the Tribunal had a different view about the need to exercise discretionary powers, that a hearing would be required.
45. In particular, at paragraph [5] of the 9 January 2025 letter, the Appellant's representative said that where adverse concerns were a reason, or part of a reason, for making a decision to affirm the Secretary's Decision, the Applicants requested notice of such concerns and "an opportunity to comment and/or file submissions on such concerns". It is tolerably clear in the context of that letter (and the earlier correspondence) that the opportunity requested was an opportunity to make a written comment or submission, not an opportunity to attend a further hearing.
46. The Tribunal made perfectly clear in its correspondence that it was asking whether consent was being given under s.40(2)(b) of the Act. The consent provided was not rendered conditional by reason of the fact that the Appellant's representative then proceeded to raise an argument about how procedural fairness was otherwise to be afforded. The letter was not phrased so as to narrow the consent given consistent with s.40(2)(b).
47. I am satisfied that the combined responses of CMN on 27 December 2024 and 9 January 2025 constituted consent for the purpose of s.40(1)(b) of the Act. The Tribunal therefore properly proceeded to determine the Appellant's matter without giving him a further invitation to appear before them. The Appellant has not made out ground 1 of the Amended Notice of Appeal.

GROUND 2 – AS A QUESTION OF FACT, CONSENT NOT GIVEN

The Appellant's Submissions

48. The second ground of appeal contends that as a matter of fact, the Appellant did not consent to the Tribunal proceeding to make a decision without a further hearing. In this appeal, there is a further piece of relevant evidence over that found in the AQ25

and AP25 cases. It is in the form of a file note dated 11 December 2024. The file note was apparently prepared by a Ms Robson, an employee of CMN.

49. Ms Robson's file note was relevantly in the following terms:

11 December 2024

...

Spoke to client and advised that a Member of the Tribunal has to be replaced following his previous hearing.

This gives him an opportunity to attend a fresh hearing. Alternatively, if he does not want to proceed with a new hearing, we are able to address any adverse concerns the Tribunal may have, in writing.

Advised it is highly unlikely for a decision to be positive if he does not attend a hearing or if concerns aren't addressed on the papers.

Client elected to proceed without attending a hearing but requested we address any concerns in writing.

50. The Appellant submits that the advice given to him as contained in this file note was misleading to him. Mr Aleksov for the Appellant submitted that the Appellant was only prepared to accept proceeding without a further hearing if he was allowed the opportunity to answer the Tribunal's concerns in writing. In truth then, the Appellant did not consent to proceeding without a hearing. Nor did he consent to the position that was set out in the letter from CMN to the Tribunal of 9 January 2025.
51. As a point of statutory construction, the Appellant submits that s.40(2) of the Act creates the question of "consent" as analogous to a jurisdictional fact. That is so in the sense that it does not matter what findings the Tribunal makes, but rather, it is a question of fact that is open to be addressed by evidence before this Court, with the Court making its own decision based on the evidence on that question. This Court is not being invited to review whether the Tribunal's opinion on that question was lawfully made. The question is for the Court to decide the issue of fact for itself. If it is proven that there was no consent from the Appellant, then a hearing was required to be offered under s.40(1) of the Act.
52. As the Appellant submits, it is possible for the Tribunal to have been completely blameless in its consideration of this matter. But if, as a question of fact, this Court is not satisfied that the Appellant gave "consent" consistent with the requirements of s.40(2)(b) of the Act, then the ground of appeal ought to be upheld.

The Republic's Submissions

53. The Republic submits that the instructions recorded in the file note of Ms Robson dated 11 December 2024 support, and do not undermine, a conclusion that the Appellant properly understood his options and that, by the instructions which he gave, indicated that he did not wish to participate in a further hearing.

54. In particular, it is not open to the Court to conclude that the Appellant reserved his rights *to have a hearing*, according to the Republic. Instead, he gave an unconditional consent to not have a hearing. The communications about putting further written evidence or material before the Tribunal was in relation to the potential exercise of other statutory powers, rather than the powers and requirements of s.40 of the Act.
55. The material before the Court enables it to draw the inference that the Appellant gave the requisite consent via his representatives.
56. Finally, the Republic submits that the Appellant has made no attempt to identify how his “conditional consent” was relevantly compromised by reference to any specific findings of the Tribunal.

Consideration

57. The file note of 11 December 2024 is not an indication that the Appellant’s consent for the purposes of s.40(2)(b) of the Act was in any way conditioned upon other matters. The note does not record that the Appellant intended that there would be a second hearing depending upon whether or not his position in relation to procedural fairness otherwise was agreed to by the Tribunal. As the file note says: “If [the Appellant] does not want to proceed with a new hearing”, they are able to address any adverse concerns in writing. None of this is to give any indication that the Appellant did not understand that what he was doing was giving a plain acknowledgement that he did not wish to proceed with a second hearing before the Tribunal. Instead of a second hearing, he wished to deal with the matter by way of addressing any adverse concerns in writing. At no point does the file note contemplate that circumstances may arise where a second hearing would be requested.
58. I note that the representative referred to a discretion under s.7 of the Act, which applies to the Secretary. However, it is clear that there are other powers vested in the Tribunal (see eg. s.36 concerning discretionary powers to seek further information on the part of the Tribunal). I do not think anything turns upon the apparently incorrect reference to s.7 in the correspondence as opposed to s.36.
59. In the circumstances, I am not persuaded that the Appellant did not give consent for the purposes of s.40(2)(b) of the Act. Ground 2 of the Amended Notice of Appeal is not made out.

GROUND 3 - IRRATIONALITY

The relevant findings

60. By Ground 3, the Appellant contends that the finding at paragraph [93] of the Tribunal Decision is irrational or amounts to a failure to take account of the actual evidence of the Appellant at the RSD interview. Alternatively, he contends that there was a breach of the requirements of procedural fairness in the making of a finding that was not reasonably open on the known facts.
61. The following passages from the Tribunal Decision are relevant:

[23] The applicant stated that on 10 January 2018, a big procession took place in [C] with BNP supporters demanding a fair election under a caretaker

government. About 20 to 30 AL people tried to obstruct the procession and violence broke out near the applicant's shop. He was in the shop at the time. The police were present and the crowd slowly broke up. Around 8:00 pm that evening, around 10 AL people came to the applicant's shop, accused them of supplying hockey sticks and storing other weapons for the BNP people that afternoon and ransacked his shop. He stated that he ran away and escaped with his life and went to his uncle's house that night.

...

- [43] The applicant spoke about a BNP rally ahead of the 2018 election and its campaign for a caretaker government to be installed. Although the procession was held near his shop, which is on the main road, he did not attend as he was in his shop. AL supporters tried to stop the rally and a fight broke out near his shop around 5:00 pm – 5:30 pm between the two parties and the police came and put an end to the fighting. Later that night, around 8:00 to 8:30 pm, 8 to 10 AL supporters came to his store and vandalised it, accusing him of giving hockey sticks to the BNP supporters to beat the AL supporters. They said he stored the hockey sticks in his shop and gave them out during the rally.
- [44] The applicant told the Tribunal this accusation was not right and they used this for an excuse to justify vandalising his shop. He said they had been looking for an excuse for a while. He said the AL people had brought the hockey sticks to the fight. They damaged his shop counter and took some cash but the other shopkeepers intervened and shut the door before they could do more damage and take much of the stock.
- [45] When asked by the Tribunal what he said to the AL people about supplying and storing hockey sticks, the applicant said he ran away and did not speak with the AL supporters. They just started vandalising his shop and he had no chance to talk with them. He did not try and stop them. When asked to describe how the AL people had made their accusations, the applicant replied that he only subsequently learnt from the Bazaar Committee about the accusation that he had supplied hockey sticks to the AL people. He had complained to the Bazaar Committee about the attack on the shop. He stayed the night at another shopkeeper's house as he was too scared to go home. He complained to the police the next day. The police said they would investigate and see if there was a case.
- [46] The Tribunal referred the applicant to Paragraphs 21-22 of his first statement in which he said “on the same day around 8:00 pm, around 10 Awami League members came to my shop. They accused me of supplying hockey sticks and storing other weapons for the BNP crowd that afternoon. They ransacked my shop, but I ran away and escaped with my life. I went to my uncle's house that night.”
- [47] The Tribunal asked the applicant about the impression it had gained that he was present in his shop when he was accused of supplying hockey sticks and storing other weapons. The applicant replied that he did not know what his first statement said, but it was not the way he had said it. It occurred the

way he had told the Tribunal. He said the AL people had just arrived at his shop and attacked it. There had been no opportunity to talk.

...

- [91] The Tribunal does not accept that the applicant's garment shop in [C] was specifically targeted for ransacking on 10 January 2018 because he was a BNP supporter, nor that he was threatened by AL supporters, following the clash at the BNP rally between AL and BNP supporters. The Tribunal noted the following inconsistencies in the applicant's account of the ransacking of his shop.
- [92] The applicant stated in his first statement that at around 8:00 pm that night, "around 10 Awami League members came to my shop. They accused me of supplying hockey sticks and storing other weapons for the BNP crowd that afternoon. They ransacked my shop, but I ran away and escaped with my life."
- [93] At his RSD interview, the applicant said he was in his shop when he saw eight or nine AL people coming towards the shop carrying sticks. He got scared, left the shop, and ran to his uncle's house. He omitted to mention to his RSD interviewer the serious accusation concerning his alleged supply of hockey sticks and storing of other weapons to the BNP supporters. The applicant said he was told by other shop owners that the AL people tried to ransack his shop but the shop owners managed to intervene and shut his shop door.
- [94] At his hearing before the Tribunal, the applicant initially said when the AL people vandalised his shop, they were accusing him of giving hockey sticks to the BNP supporters to beat the AL supporters. They said he stored the hockey sticks in his shop and he gave them out during the rally. On being asked by the Tribunal to explain how the conversation took place with the AL people, the applicant said they did not speak to him as he had already run away.
- [95] The applicant's description of damage to his shop has varied from his shop being ransacked; to just damage to his shop counter and some cash being taken; to the AL trying to ransack his shop but other shopkeepers managing to intervene and shut the door.
- [96] The Tribunal notes that political violence is endemic in Bangladesh in the lead up to elections. It accepts that there was a BNP procession on 10 January 2018 during which BNP supporters were attacked by AL supporters. The Tribunal accepts that during the BNP procession, a fight ensued near the applicant's phosphorous shop, which is on a main road, and that his shop may have been damaged during the violence that day and he subsequently reported it to the police. However, the Tribunal does not accept the applicant's account of being threatened later that evening, having to flee and his shop then being vandalised. As indicated above, the Tribunal is of the view that the applicant had limited involvement in BNP activities and does not accept that the applicant was specifically targeted.

The Appellant's submissions

62. The Appellant submits that at [93], the Tribunal considered that it was probative that the Appellant had not said at the RSD interview that the reason why the AL people attacked him was their belief that he had armed BNP people with hockey sticks.
63. The transcript of the RSD interview reveals that the Appellant was never asked at that interview about why the AL were after him. The relevant exchanges are referred to on page T17 of the hearing transcript and I was taken to that passage. The Appellant submits that the interview was focused solely on what happened, and not why it happened.
64. Counsel for the Appellant submits that it was either irrational to reason in this way on the actual evidence, or that the reasoning amounted to a failure to take account of the actual evidence of the Appellant at the RSD interview. Alternatively, there was procedural unfairness in the making of a finding that was not reasonably open on the known material.

The Republic's submissions

65. The Republic submits that the Appellant's account to the RSD interviewer needs to be viewed in the context of having his attention specifically drawn to the incident on 10 January 2018, and the general invitation to discuss what happened. The Appellant did not take any issue in his submissions, or his further evidence to the Tribunal, about this omission as it was clearly recorded in the Secretary's Determination. Before the Tribunal however, the Appellant resiled from what he had said in his Statement of Claim as to the communication concerning the serious accusation of supplying hockey sticks and other weapons for the BNP. The Tribunal then noted the significant difference in his account as to whether, and how, he had conversed with the "AL people" while in the shop.
66. The Republic submits that on any view, the Appellant's factual account materially differed in a manner that was relevant to his credibility. This, coupled with the unchallenged and varying descriptions of the damage sustained to the Appellant's shop, led the Tribunal to its ultimate finding at paragraph [96].
67. The Republic submits that there is nothing irrational about how the Tribunal conducted its necessary fact finding when regard is had to the totality of the Tribunal's findings at [23], [43] - [47] and [91] - [96] are fairly viewed in the context of the case.

Consideration

68. In essence, the Appellant's complaint is that what the Tribunal said at [93] assumed that the Appellant was asked about why the AL went after him at the RSD interview. In the context of the findings of the Tribunal set out above, it is apparent that the Tribunal was indicating that there were a number of inconsistencies. Only one of those is the fact that the allegation about the AL people accusing the Appellant of providing hockey sticks was not made in the interview before the RSD officer.

69. There is no doubt that this explanation not given to the RSD officer. It appears to have been something that arose later. However, in my view, there is nothing irrational in reasoning the way which the Tribunal has. It is true that the RSD officer did not specifically request an explanation for what the AL people said about why they were attacking the Appellant's shop. However, this is no doubt explained by the fact that the Appellant says he saw them coming and immediately ran away.
70. In my view, there is nothing irrational about the approach of the Tribunal. There was an evident and intelligible justification for the Tribunal's reasons. Nor did it amount to a failure by the Tribunal to take account of the actual evidence of the Appellant. Accordingly, there is no element of procedural fairness in the making of a finding which, in my view, was reasonably open on the evidence.
71. Ground 3 of the amended Notice of Appeal is not made out.

CONCLUSION

72. For the reasons that I have set out above, the Appellant fails in respect of each of the three grounds of his amended Notice of Appeal. The appeal is dismissed.
73. Pursuant to s.44(1) of the Act, I make an order affirming the Tribunal Decision.
74. I make no order as to the costs of the appeal.



JUSTICE MATTHEW BRADY

19 November 2025