

ETA067 v THE REPUBLIC OF NAURU (M167/2017)

Court appealed from: Supreme Court of Nauru
[2017] NRSC 99

Date of judgment: 13 November 2017

The appellant is a citizen of Bangladesh. He is 31 years old and unmarried. His ethnicity is Bengali and his religion is Islam. He arrived in Australia in December 2013 as an unauthorised maritime arrival and then transferred to Nauru.

In March 2014 the appellant applied for refugee status determination under the *Refugees Convention Act 2012* (Nr), claiming that he had a well-founded fear of persecution upon return to Bangladesh for reason of an imputed political opinion. The Secretary of the Nauru Department of Justice and Border Control refused the application in March 2015. The appellant made an application for merits review of that decision to the Refugee Status Review Tribunal.

The appellant's evidence before the Tribunal was that he joined the Bangladesh Nationalist Party ("BNP") in 2004 and became one of its local Publications Secretaries. He was thereafter physically harmed in the many violent clashes which occurred between the BNP and the opposing Awami League ("AL") when those political parties had organised public meetings on the same day and place. He said he ended his involvement with the BNP in 2008 and from then on, was pressured by the AL to join them, they believing he was an influential former member of the BNP. The appellant was afraid that he would be harmed if he continued to refuse to join the AL. He claimed that in 2010 he saw the AWL beat his friend R, whom they had been trying to recruit for a long time but who continually refused to join them. The beating occurred on the street, before a crowd of people. He described the pressure from the AL upon him gradually increasing, particularly in the lead up to the 2014 elections. He claimed he fled the country before the escalation reached the stage he knew would be violent physical assault and possible death.

In September 2015 the Tribunal affirmed the decision of the Secretary that the appellant was not recognised as a refugee and was not owed complementary protection under the Act.

The Tribunal found the appellant had not suffered harm in the past amounting to persecution for reasons of his imputed political opinion, nor did it accept that there was a real possibility that the appellant would face harm in the reasonably foreseeable future. Even if some harm might befall the appellant, any risk of that harm was confined to the locality of the appellant's own suburb of Dhaka, from which the appellant could safely relocate. This was because the Tribunal reasoned that the appellant had no profile within the BNP (he being "merely" a supporter and not ever a formal member of the BNP) and therefore could safely relocate to another part of Dhaka.

The appellant unsuccessfully appealed to the Supreme Court of Nauru in November 2017. Judge Khan dismissed the first ground of the appeal that the Tribunal erred by failing to deal with the evidence of beatings of people for their

resistance to joining the AL, particularly the appellant's friend R. Judge Khan found it unnecessary to consider the second ground (that the Tribunal had failed to accord the appellant natural justice by not giving him the opportunity to be heard on the issues it found relevant to the question relocation) given his dismissal of the first ground of appeal. The respondent had submitted, and the appellant had conceded, that to succeed in the appeal the appellant had to succeed on both grounds.

The appellant appealed to the High Court, invoking its jurisdiction to hear and determine appeals from the Supreme Court of Nauru by virtue of s 5 of the *Nauru (High Court Appeals) Act 1976* (Cth) and Article 1A(b)(i) of the Agreement between the Governments of Australia and Nauru Relating to Appeals to the High Court of Australia.

The grounds of appeal are:

- That the Supreme Court of Nauru erred in failing to find the Refugee Status Review Tribunal breached s 22(b) of the *Refugees Convention Act 2012* (Nr) in that it ignored and failed to assess relevant evidence provided by the appellant;
- That the Supreme Court of Nauru erred in failing to find the Refugee Status Review Tribunal breached s 22(b) and s 40(1) of the Act in not acting according to the principles of natural justice.