



IN THE SUPREME COURT OF NAURU

AT YAREN

APPEAL NO. 99/2015

Being an appeal a decision of the Nauru Refugee Status Review Tribunal brought pursuant to s43 of the Refugee Convention Act 2012

BETWEEN:

CRI018

APPELLANT

AND

The Republic of Nauru

RESPONDENT

Before: Khan, J
Date of Hearing: 16 March 2016
Date of Ruling: 15 December 2016
Case may be cited as: CRI108 –v- The Republic

CATCHWORDS:

Whether the Tribunal's finding were unreasonable based on error of facts and misunderstanding the appellant's claim.

Held that the Tribunal clearly understood the claim and findings were reasonable.
Appeal dismissed.

APPEARANCES:

Counsel for the Appellant: J Gormly
Counsel for the Respondent: C Fairfield

JUDGMENT

INTRODUCTION

Section.43 of the Refugee Convention Act 2012 (the Act) provides:

“Jurisdiction of the Supreme Court:

1. A person who, by a decision of the Tribunal, is not recognised as a refugee may appeal to the Supreme Court against the decision on a point of law.”
2. The Refugee Status Review Tribunal (the Tribunal) delivered its decision on 22 May 2015 affirming the decision of the Secretary that the appellant is not recognised as a refugee and is not owed complimentary protection under the Act.

BACKGROUND

The appellant background is as follows:-

- The appellant was born in Shinair Village, Brahman Baria District, Bangladesh on 5 May 1992.
- He is a single male and he is a Sunni Muslim.
- He received 10 years of education in Bangladesh which ended in 2009.
- He was employed from 2002 to May 2013 in casual work on his parent’s farm.
- He also worked as a quality controller in a barman factory in the first half of 2011 for a period of 2-3 months.
- He worked as a trainee printer in his village in 2012-2013.
- His parents and 5 siblings live in Bangladesh while 1 lives in Malaysia and 1 in Saudi Arabia.
- He claimed to have left Bangladesh because of political and family problems.
- He left Bangladesh on 6 May 2013 and travelled to Malaysia, Indonesia and arrived in Christmas Island on 14 March 2013 and was transferred to Nauru.

APPLICATION TO THE SECRETARY ON 8 DECEMBER 2013

3. On 5 March 2014 the appellant applied to the Secretary of the Department of Justice and Border Control (the Secretary) for Refugee Status Determination (RSD) and for complimentary protection under the Act.
4. A detailed statement was prepared on his behalf by his lawyers on 17 March 2014 and he was interviewed by an officer from RSD on 17 May 2014.

SECRETARY'S DECISION

5. In his decision, the Secretary:
- Accepted that the appellant had been a member of BNP student wing Jatiotabadi Chatra Dal (Chatra Dal) from the age of 15.
 - Accepted that the appellant was involved in a family dispute over his mother's land.
 - Accepted that the applicant suffered some physical harm from his uncle, half-brother and other AL supporters due to his involvement in Chatra Dal.
 - Was not satisfied that there is a real possibility that the applicant, who is not an activist or influential member of the opposition, would face harm from Awami League (AL) and its supporters if he returned to Bangladesh.
6. On 23 January 2015 the Secretary made a finding that he was not satisfied that the applicant was a refugee within the meaning of the Act and he was not owed a complimentary protection under the Act.

APPLICATION TO THE TRIBUNAL

- 7 Pursuant to section 31 of the Act, the applicant made an application for a review to the Tribunal on 9 February 2015. Section.31 states as follows:-
- 1) A person may apply to the Tribunal for merits review of any of the following:-
- a) A determination that the person is not recognised as a refugee;
 - b) A decision to decline to make a determination on the person's application for recognition as a refugee;
 - c) A decision to cancel a person's recognition as a refugee (unless the cancellation was at the request of the person);
 - d) A determination that the person is not owed complimentary protection.
8. On 25 March 2015 the applicant's lawyers, Craddock Murray Newmann (CAPS) made written submission to the Tribunal. He appeared before the Tribunal for the hearing of his application with his legal representative, Ms Black on 31 March 2015. The Tribunal was assisted by an interpreter in Bengali and English language.
9. The Tribunal considered the appellant's claim to have suffered harm in Bangladesh because of his political activism in support of Chatra Dal and BNP. He also claimed that this activism contributed as well to his having suffered harm in connection with a family dispute over land. The Tribunal considered that there were good reasons to doubt the credibility of these claims.

CONCLUSION ON REFUGEE CONVENTION ASSESSMENT

10. Having expressed doubt as to the appellant's credibility on his claim the Tribunal was not satisfied that the appellant would face harm amounting to persecution on his return to Bangladesh for convention reasons of his political opinion, nor was it satisfied that he would face harm from his relatives with respect to his mother's land as to make him join the AL. The Tribunal therefore came to the conclusion that he was not a refugee within the meaning of the Act and nor was he owed complimentary protection and affirmed the decision of the Secretary.

THIS APPEAL

11. The appellant filed the following grounds of appeal:-

- 1) Ground 1 –

Whether the Tribunal's finding not to accept the appellant as a member of Jatiotabadi Chatra Dal (Chatra Dal) or that he worked to support the BNP or Chatra Dal was open on the evidence before it or whether the finding was unreasonable as based on error of fact, a misunderstanding of the appellant's claim and unreasonable rejection of corroborative documentary evidence.

Ground 2

- 2) – Whether the Tribunal misunderstood the appellant to have claimed formal membership of the BNP and whether the appellant's claim in relation to BNP were of merely "belonging to", being "involved with", "working for", or "joining" the BNP and did not amount to a claim of formal membership. Whether the Tribunal misunderstood the appellant to have claimed persecution as a member of the Chatra Dal as if that claim was inconsistent with or distinct from fearing persecution as someone "belonging to", being "involved with", "working for", or "joining" the BNP.

- 3) Ground 3 –

Whether the Tribunal's rejection of corroborative material which the appellant provided to the Tribunal as not genuine and to be accorded evidentiary weight was unreasonable or open on the evidence before it.

SUBMISSIONS

12. Both parties filed very helpful written submissions subsequently elaborated on the submissions at the hearing.

CONSIDERATION

Ground 1

13. At [17] of its decision, the Tribunal stated:

“There are discrepancies in the applicant’s evidence about the nature of his political involvement in Bangladesh. In his transfer interview he made no mention of belonging to any political party. In his RSD statement he claims he began attending meetings and gatherings for BNP supporters when he was fifteen and joined the BNP in 2011. In his RSD interview he stated that he joined the BNP in 2011 by completing a form, giving a short speech and reciting party slogans. He made no mention of Chatra Dal but submitted a document, in English, on Chatra Dal letterhead stating that he had been a member of that organisation since 2011.”

14. The appellant’s submission at [33] is that the “Transfer Interview” records the appellant’s response to the question of “association or involvement with any political group or organisation” *“I am involve the party called BNP”¹*.
15. The respondent’s submission at [53] is: “Thus, it is far from clear that the appellant did claim at his transfer interview that he had been involved with a political party. At best, there is an indication that he might have done so”. Further, the respondent submits at [54], [55] and [56] as follows:

[54] In any event, the Tribunal’s relevant finding, was that *‘taking the applicant’s responses into consideration together with the contrary information, the Tribunal finds there is an inconsistency evident in his claims about the organisation he joined which is not fully explained and which casts doubt over the credibility of those claims.*

[55] The Tribunal’s concern was that when the appellant said at the hearing in his ‘responses’ about the ‘organisation he joined’ was different from what he had previously stated. At the Tribunal hearing noted at [17], he stated he joined BNP in 2011 and made no mention of Chatra Dal. However, at the hearing he stated that he joined Chatra Dal in 2011. The Tribunal also found that this discrepancy was not ‘fully explained’. Therefore, even if the Tribunal made the error alleged, it was not material. In any event he did not refer to Chatra Dal in the transfer interview but to the BNP. That would merely have reinforced the Tribunal’s concerns about the inconsistency it had identified.

[56] Moreover, the appellant’s claim was that he was at risk because of his involvement with Chatra Dal and/or BNP. The Tribunal also made further findings about his level of involvement with Chatra Dal or BNP based upon his evidence at the hearing. The Tribunal was not satisfied that his responses reflected authentic, first hand experiences or insights which a committed party worker, even if at a low level, which he claimed, could reasonably be expected to have.”

¹ BOD p12

16. Having considered the submissions and the material, I am satisfied that the Tribunal's finding at [17] was open to it on the basis of the evidence before it and therefore its findings were not unreasonable.

Ground 2 – misunderstanding the appellant's claim

17. At [47] of his written submission, the appellant submits that:

“It is the Tribunal's failure to grasp the claim, along with the mistake of fact and unreasonable rejection of the corroborating evidence, which renders its finding not to accept the appellant was a member of Chatra Dal or that he worked to support either the BNP or Chatra Dal to be legally unreasonable.

18. The Secretary's finding was that the *“applicant's claim to fear harm from AL and its supporters for reason of his political opinion as a member of JCD and supporter of BNP”*.

19. There was some confusion between the appellant and his advisors about the appellant joining the BNP and JCD. The appellant's advisors made submissions to the Tribunal on 25 March 2015 that:

“Mr Arman joined the BNP in 2011, following his early support of the JCD, the student wing of the BNP.”

20. The Tribunal dealt with the issue of the appellant's membership of BNP and Chatra Dal and stated as follows at [41]:-

“In light of all the information before it, the Tribunal does not accept that the applicant was a member of the BNP or its student wing, Chatra Dal, while he was in Bangladesh. Nor does the Tribunal accept that he worked to support the BNP or Chatra Dal by publicising meetings and rallies, encouraging new members or in any way. While the Tribunal accepts that he may have attended public events staged in his village by the BNP or Chatra Dal, it is not satisfied he did this other than as a member of the general public. The Tribunal does not accept that he suffered harm of any kind in Bangladesh in the past, let alone harm amounting to persecution, arising because of the expression of his political opinion or because of an ongoing dispute with his family land held by his mother.”

21. The appellant's submission is that the Tribunal made a mistake of fact in understanding his evidence in that his activities with Chatra Dal meant that he was also a supporter of or involved with BNP. The respondents in response relied on the Federal Court of Australia where it was stated:

“an error of fact based on a misunderstanding of evidence or even overlooking an item of evidence in considering an appellant's claim is

not jurisdictional error, so long as the error, whichever it may be, does not mean that the RRT has not considered the applicant's claim"².

22. The respondent further submits that the Tribunal did not misunderstand the appellant's evidence as in the Tribunal's reasoning it noted that the appellant in his RSD statements stated that he began attending meetings and gatherings of BNP supporters when he was 15 and he joined BNP in 2011. In his RSD statement he stated that he joined BNP in 2011 and the Tribunal noted that he made no mention of Chatra Dal.

23. At the Tribunal hearing, the appellant stated that he joined Chatra Dal and not BNP. When it was put to the appellant by the Tribunal that he had spoken of being involved with BNP, the appellant's response was "as to whether he now understood the distinction between them he said when his RSD statement was being prepared he was only asked which party he joined, and not whether it was Chatra Dal." In the respondent's submission at [65], [66], [67], [68] and [69] it is stated as follows:

[65] The Tribunal noted the post hearing submissions from the appellant's lawyers when the appellant "stated that BNP and Chatra Dal are the same he had been trying to articulate that they share a common political ideology and mutual allegiance since the Chatra Dal is a student wing of the BNP.

[66] The Tribunal stated:

"The Tribunal notes and accepts the country information indicating that Chatra Dal is one of a number of bodies affiliated to the BNP which are designed to mobilise support for the party at various levels of Bangladeshi society. Its main focus is on students, at secondary and tertiary level, and it works both on and off campus to recruit members, garner support for the BNP candidates at elections and provide the numbers for public action such as protest demonstrations and strikes designed to further the BNP objectives. In performing this role it operates in close co-ordination with BNP leadership. It is, nevertheless, not equivalent to BNP and it retains its own membership and its own constitution."

[67] The Tribunal therefore clearly took into account that Chatra Dal was affiliated to, mobilised support for, and recruited membership for, the BNP. It took into account that there was a close 'co-ordination' between Chatra Dal and BNP. It also took into account the appellant's explanation as to why he had not referred to Chatra Dal before the hearing and why he had previously claimed he joined the BNP and not Chatra Dal in 2011. The Tribunal attributed weight to country information that Chatra Dal retained its own membership and its own Constitution. The Tribunal found that the applicant's explanation for his inconsistent responses was not 'fully explained' which 'cast doubt' over the credibility of those claims. That finding was open to the Tribunal.

² Minister for Immigration and Citizenship -v- Sznpg (2010) 115 ALD 303, 309 and [28] Pernot and Lender JJ.

[68] In truth, the appellant's submission is to the effect that it was unreasonable for the Tribunal not to accept the appellant's explanation. However, that is to descend into merits review. The appellant does not submit that this court on appeal is engaging in a merits review of a decision of the Tribunal. The respondent submits that having regard to the Act as a whole including the provisions of Part 5 of the Act, this court is not engaging in a merits review of a decision of the Tribunal.

[69] Moreover, the language 'not fully explained' and 'cast doubt' demonstrates that the Tribunal did not make any adverse credibility finding solely based on that reasoning. The Tribunal also had concerns about the genuineness of the supporting letter as to his claimed membership of Chatra Dal and his and his representative's response in that respect. The reason included not only consideration of the document itself, but also the applicant's own evidence about it as well as country information."

24. I am satisfied that there is no basis to suggest that the Tribunal misunderstood the appellant's claim in regards to joining the BNP and this ground of appeal is dismissed.

Ground 3

25. – This ground arises as a result of the findings made by the Tribunal at [26] where it stated

"The applicant was unable to offer an explanation for the discrepancy at the hearing and in his post hearing submissions simply reasserts that the letter is genuine and was provided by the leaders of the Chatra Dal in his home area. The Tribunal notes that this issue is not simply a minor imperfection given that the letter is said to have been produced on official letterhead of Chatra Dal, an organisation affiliated to one of Bangladesh's 2 major parties and finds it an indication that the document is not genuine."

26. At [52], the appellant submits that this ground arises from the Tribunal's finding at [26] that the difference of an additional "leaf" 'in the laurel wreath design' on the digital logo on Chatra Dal website from that logo in Chatra Dal supporting letter (Book of Documents P49) indicated that the document was not genuine.

27. The appellant submits that the Tribunal's conclusion was unreasonable because of its assumption that all Chatra Dal letterhead would be produced with the digital logo.

28. The appellant was informed by the Tribunal that the official insignia of Chatra Dal contained 6 leaves whereas the letter that he produced contained only 5 leaves. The appellant was asked to offer an explanation. At the hearing the appellant's representative asked the Tribunal as to where did it obtain that information from and she was informed that it was from Wikipedia entry for Chatra Dal.

29. The appellant was given an opportunity to provide post hearing submissions. The Tribunal was simply informed that the letter was genuine and no material was placed

before the Tribunal by the appellant or his representative to challenge that the Tribunal's assertion that the official insignia of the Chatra Dal was different to the logo appearing in the letterhead.

30. In the circumstances, the Tribunal was correct when it said at [28]:

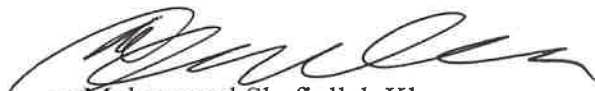
“When these features are taken together with the contrary information, the Tribunal is unable to place any evidentiary weight on the letter that support of the applicant's claim.”

31. I find that this ground of appeal has no merits and is dismissed.

CONCLUSION

32. For the reasons set out above, the appeal is dismissed and I make an order affirming the decision of the Tribunal.

DATED this 15th day of December 2016



Mohammed Shafiullah Khan
Judge

