

QLN146
Appellant

REPUBLIC OF NAURU
Respondent

APPELLANT'S SUBMISSIONS

I. INTERNET PUBLICATION

1. These submissions are in a form suitable for publication on the Internet.

II. ISSUES

- 10 2. The issue arising on this appeal is a narrow one. The Refugee Status Review Tribunal (the **Tribunal**) rejected the credibility of the appellant's claim to have fled his home town of Achchuveli in Sri Lanka. Is it the case that one of the reasons that, cumulatively, led to that conclusion was that it was "difficult to believe" (i.e. implausible) that the appellant would have been able to bribe a local army commander by paying Rs 2 lakhs to assist him to flee?
- 20 3. The appellant had claimed that he had arranged for such a bribe to be paid so as to facilitate his escape from local militants, who he feared would harm him as a result of the support that he had provided to the LTTE when they had controlled the area. The Tribunal relevantly stated, at paragraph [39] of its reasons, that it had "put to the applicant that it seemed difficult to believe he would have been able to bribe the army commander, even with a sum of Rs 2 lakhs, to allow him to escape to Colombo if he had genuinely been suspected of involvement with the LTTE". The Tribunal relevantly stated, at paragraph [51] of its reasons, that "the Tribunal is not satisfied that the concerns which it put to him at the hearing can be dismissed".

4. Before the Supreme Court, the appellant contended that an aspect of the Tribunal's reasoning was that it had in fact found his bribe claim "difficult to believe" (i.e. implausible). The appellant submitted that any error of law affecting this aspect of the Tribunal's reasons was vitiating, as it was one of a number of reasons that cumulatively led to the Tribunal rejecting the appellant's claim to have been targeted by the authorities for supporting the LTTE.¹ The appellant contended that the Tribunal made one or more errors of law: *first*, the Tribunal failed to consider his evidence to the effect that money can buy anything in Sri Lanka; *secondly*, if the Tribunal considered this evidence, it failed to give adequate reasons for rejecting it;² and *thirdly*, the Tribunal had no evidence to support a conclusion that it was implausible that the army commander would be unamenable to a bribe of this amount to assist the appellant in the manner claimed.³
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5. The respondent (the **Republic**) did not deny that, if the Tribunal had in fact found it "difficult to believe" that the appellant would have been able to bribe the army commander, the Tribunal would have made an error of law. The Republic instead resisted the premise to the appellant's contentions. The Republic contended that the Tribunal had not in fact found it "difficult to believe" (i.e. implausible) that the appellant would have been able to bribe a local army commander by a payment of Rs 2 lakhs⁴ to assist him to flee from Achchuveli.
6. The Court accepted the Republic's submissions. The Court found that the Tribunal "accept[ed] that [the appellant] may have left his local area in the way he described" ([37])
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¹ The appellant relied on *ARG15 v Minister for Immigration and Border Protection* [2016] FCAFC 174 at [74]. Cf. *Minister for Immigration and Citizenship v SZOCT* (2010) 189 FCR 577 at [83]-[84] (Nicholas J).

² The appellant relied on various authorities for the proposition that failure by the Tribunal to provide adequate reasons is an appealable error, including *Dornan v Riordan* (1990) 24 FCR 564, 573-574; *Civil Aviation Safety Authority v Central Aviation Pty Ltd* (2009) 179 FCR 554, 562-563; *Comcare v Singh* (2012) 126 ALD 119 at [26]; *Ekinci v Civil Aviation Safety Authority* (2014) 227 FCR 459 at [107]-[114]. Notably, unlike the *Migration Act 1958* (Cth), an appeal to the Supreme Court from a decision of the Tribunal is not confined to *jurisdictional* error, it includes any error of law. See, for example, *QLN043 v Republic* [2018] NSRC 3 at [37]-[40]. Compare, for example, *Re Minister for Immigration and Multicultural and Indigenous Affairs; Ex parte Palme* (2003) 216 CLR 212 at 224-226.

³ The appellant relied on various authorities regarding the limits on making findings of implausibility, including: Hathaway and Foster, *The Law of Refugee Status: 2nd edition* (2014) at 140; United Nations Human Rights Committee (UNHCR), *Beyond Proof: Credibility Assessment in EU Asylum Systems* (2013) at 39, 41; *WET040 v Republic* [2017] NSRC 79 at [34]-[37], applying *W148/00A v Minister for Immigration and Multicultural Affairs* (2001) 185 ALR 703 at [67] (Full Court). For example, the UNHCR stated that: "Speculative argument that fails to rely on objective and reliable sources of information and that reflects the decision-maker's own theory about how the applicant or others could or should have acted, violates the principle of objectivity ... Credibility findings have to be explained and supported by the evidence. Where the determining authority finds a lack of credibility, there must be a basis or foundation in the evidence ... Speculation occurs when a decision-maker reaches subjective conclusions without relying on supporting evidence. Adverse credibility findings should not be based on unfounded assumptions, subjective speculation, conjecture, stereotyping, intuition or gut feelings."

⁴ The Tribunal noted at footnote [2] of its written statement that Rs 2 lakhs was equivalent to about \$1,750 AUD at then current exchange rates.

and that “the Tribunal did not make a finding that an army commander would not accept the bribe to compensate for the risk of corruptly facilitating the escape of a person suspected of LTTE involvement” ([38]).

7. The appellant contends that the Supreme Court was wrong to so conclude, and thereby to dismiss the appeal. Consistently with the approach that it took below, the Republic has not filed any notice of contention that the Supreme Court has erroneously decided, or has failed to decide, some matter of fact or law.⁵ Accordingly, the issue raised is a narrow one.

III. SECTION 78B NOTICES

- 10 8. The appellant has considered whether any notices should be given in compliance with s 78B of the *Judiciary Act 1903* (Cth), and considers that no such notices need be given.

IV. REASONS OF SUPREME COURT

9. The reasons for judgment of the Supreme Court are available on the Internet at *QLN 146 v Republic* [2018] NRSC 1.⁶ There is no authorised report of the reasons for judgment.

V. RELEVANT FACTS

10. The appellant is a national of Sri Lanka, from the town of Achchuveli⁷ near Jaffna.
11. On 29 September 2014, the appellant applied to the Secretary under section 5(1) of the *Refugees Convention Act 2012* (Nr) (the Act) to be recognised as a refugee.
12. On 11 October 2015, the Secretary determined under section 6(1) that the appellant is not recognised as a refugee, and is not owed complementary protection.
- 20 13. On 22 October 2015, the appellant applied to the Refugee Status Review Tribunal (the Tribunal) under section 31(1)(a) of the Act for review of the Secretary’s determination.
14. On 26 November 2016, the Tribunal purported to exercise its power under section 34(2)(a) of the Act to affirm the Secretary’s determination. On the same date, the Tribunal gave the appellant and the Secretary a written statement in purported compliance with its obligation under section 34(4).⁸ Section 34(4) required the Tribunal to prepare a written statement that “sets out the reasons for the decision”; “sets out the findings on any material questions of fact”; and “refers to the evidence or other material on which findings of fact were made”.

⁵ Cf. rule 42.08.5 of the *High Court Rules 2004* (Cth).

⁶ www.pacilii.org/nr/cases/NRSC/2018.1.html

⁷ The town is referred to by the Tribunal as “Achuveli”.

⁸ Core Appeal Book (CAB) 5.

15. A premise to one of the appellant's claims, which was accepted by both the Secretary⁹ and the Tribunal, was that he had operated a bus service in Jaffna, and that before the Sri Lankan military took control of the area in July 2006 he had assisted the Liberation Tigers of Tamil Eelam (the LTTE) by allowing them to use his bus service for their activities. The Tribunal summarised the appellant's claim on that premise as follows ([28], emphasis added):

10 *The applicant claims, in summary, that in 2006 the military began pursuing those who had given assistance to the LTTE during the ceasefire period. Army personnel and 'militants' came to his house on three occasions in June-July 2007 but he was able to avoid them each time. He and his family were able to escape from Jaffna to Colombo where they were able to hide for another five months. In December 2007 he was arrested and beaten by police and interrogated as to his presence in Colombo. He was released the next day after his wife paid a large bribe and he and his family fled to India on 12 January 2008.*

16. The Tribunal observed that these claims "have been advanced with some consistency since the [appellant's] arrival in Nauru" ([29]). However, the Tribunal considered that there were "good reasons to doubt their credibility".¹⁰ The Tribunal then set out these reasons at paragraphs [30] to [49]. It organized those reasons into five sets.

17. The reasons in the second set, in paragraphs [37] to [39] are presently relevant. The Tribunal stated as follows (emphasis added):

20 [37] *Second, the applicant claims that he was so terrified by these visits that he did not return to his home and instead hid in the homes of his sister and other people. At the hearing he told the Tribunal that he would spend the nights sleeping in the roof spaces of these houses, climbing up on tables to get there. From the time of his first visit he did not emerge in public, for fear of being found by the army. These claims are, however, in conflict with his account of the means by which he and his family left Acheveli and travelled to Colombo.*

30 [38] *Asked at the hearing about his travel to Colombo he told the Tribunal that he and his family left about a week after the last visit. He confirmed that they left from Pallaly airport, within three kilometres of Acheveli, which at the time was under the control of the military. Asked why he would do such a thing if he had been hiding from the army for weeks he agreed this was a good question but said he had spent a lot of money, through a person he knew, to bribe the local army commander, an officer named Mahendran, to organize his departure. Asked how much he had paid for this he said it was Rs 2 lakhs. Asked if he had thought of simply bribing the commander to stop the visits to his house he said the paramilitaries were also involved. To the suggestion that the army would be able to protect him from the paramilitaries he said sometimes the paramilitaries abduct people in white vans, without the army's knowledge. Further, the army commander might be posted away and a new commander might take his place.*

⁹ As noted in the Tribunal *Decision*, 26 November 2016, [16] at CAB 9.

¹⁰ Tribunal *Decision* [29] at CAB 13.

[39] *The Tribunal put to the applicant that it seemed difficult to believe he would have been able to bribe the army commander, even with a sum of Rs 2 lakhs, to allow him to escape to Colombo if he had genuinely been suspected of involvement with the LTTE. Many political leaders, including Ministers, had been assassinated by the LTTE in Colombo and if he were to be involved in such an incident there would be very severe repercussions for military officers who corruptly facilitated his travel. In response he suggested there had been an incident elsewhere in which the LTTE had attacked an army camp after bribing the commander to obtain a map of it. In Sri Lanka money can buy anything, up to a certain point. If he had not had money he would have been killed. Asked if he had been able to pass through identity checking on arrival in Colombo he said the army commander had organised the other end of his travel as well and everything was set up for him. Asked if he meant that the army commander was able to bribe officers in a completely different unit in Colombo he said he did not know exactly what the commander did.*

18. The transcript of the hearing before the Tribunal records more precisely the exchange between the appellant and the Tribunal regarding the manner and circumstances in which the appellant claimed to have left Achchuveli for Colombo.¹¹ Relevantly, the exchange included as follows:

MR MULLIN: ... *So I suppose a question that does arise here is the following: if you were so scared of the army that you had to stay in hiding for a period of some weeks, never going out for fear that you'd be shot, sleeping up in the ceiling in different houses, why was it that you felt able to go out in public to a military controlled airport, get on a plane and fly to Katunayake Airport [in Negombo city near Colombo]?*

[THE APPELLANT]: *That's a good question. I have spent a lot of money for that. Because I spent a lot of money through someone I knew for the – who knew the army commander very well and through – he organised someone and I had to pay a lot of bribe and he was bribed ...*

...

MR MULLIN: ... *I suppose there's another aspect to this, too ... and that's the following: if you were somebody who was genuinely suspected of having LTTE connections, quite serious fighting between the army and the LTTE, that seems in some ways a little difficult to believe that the army and army commander would be prepared to take the risk of allowing you to get away, even if it was for two lakhs.*

I mean, let's just say the sort of issues that this might have thrown up. Well, I mean say you – let's say you really were – sorry, let's say that they really did believe that you were something to do with the LTTE, you were going down to Colombo, you might have done something terrible. You might have assassinated another minister. A lot of ministers were being assassinated by the LTTE at that time.

¹¹ The relevant exchange is at transcript pages 36 line 39 to 39 line 5. Book of Further Material (BFM) pages 39-42.

So what happens to the army commander who gives you permission to get on the plane at Palaly to go down to Katunayake? I think he'd be in terrible, terrible trouble.

[THE APPELLANT]: *For example, when the LTTE attacked an army camp in (indistinct) they actually bribed the commander in charge of the camp and got all the map of the camp and everything and then (indistinct) attacked the camp.*

MR MULLIN: *I think that was an allegation. I'm not sure that that was ever actually demonstrated.*

10 [THE APPLICANT]: *As far as our country is concerned, if we had money, we can buy up to a certain level, whatever we want ...*

19. Ultimately, the Tribunal concluded that, “[t]aking these matters together” (i.e., the matters set out in paragraphs [30] to [49]), it did not accept that the appellant was targeted by the authorities for supporting the LTTE ([50]). Accordingly, the Tribunal did not accept that the appellant “was of adverse interest to the police, military or other authorities” ([51]). It elaborated on its conclusion as follows ([50], emphasis added):

20 *... The Tribunal does not accept that his house was visited by army and paramilitary personnel who were searching for him, that his wife was assaulted by such people, that he went into hiding in Achuveli to avoid capture or that it was for such a reason that he and his family travelled to Colombo and later left Sri Lanka to go to India, paying large bribes to be able to do so. The Tribunal does accept that he was arrested and briefly detained in Colombo in December 2007, and that he suffered a physical assault while in custody, but it finds that his release after a short period is inconsistent with his claim to have been targeted by the authorities for supporting the LTTE.*

VI. ARGUMENT

Applicable principles

20. The appellant does not apprehend there to be any controversy as to applicable principles of law. The Tribunal’s section 34(4) written statement is to be read as a whole, and should not be scrutinised over-zealously on appeal.¹² The Court should infer that what the Tribunal included in its written statement was material to its decision – that is, it recorded an aspect of the Tribunal’s reasoning (including any finding or evidence on which a finding was
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¹² *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259 at 272.

made).¹³ Ultimately, the written statement is evidence – though is not necessarily exclusive evidence¹⁴ – of the Tribunal’s reasoning process.

The Tribunal’s reasons

21. Applying the principles outlined above, the following three points may be made.
22. *First*, paragraphs [39], [50] and [51] of the Tribunal’s reasons should be read together. When those paragraphs are read together, it is quite clear that the Tribunal did not accept that the appellant had paid a bribe to facilitate his travel from Achchuveli to Colombo. In paragraph [39], the Tribunal recorded that it had “put to the applicant that it seemed difficult to believe” that such a bribe would have been effective to persuade the local army commander. In paragraph [50], the Tribunal stated that it did not accept that the appellant “went into hiding in Achuveli to avoid capture or that it was for this reason that he and his family travelled to Colombo and later left Sri Lanka to go to India, paying large bribes to be able to do so”. And, in paragraph [51], the Tribunal stated that it was “not satisfied that the concerns about the credibility of the applicant’s claims which it put to him at the hearing can be dismissed”.
23. The Republic urged the Supreme Court to attribute a particular meaning and significance to the words “or that it was for such a reason” in paragraph [50].¹⁵ The Republic submitted that these words meant that the Tribunal did not make a finding “one way or the other as to whether or not he paid large bribes to be able to effect the travel”.¹⁶ The Republic submitted that the Tribunal merely found that the appellant did not pay a bribe to the local army commander for a particular reason (to escape Achchuveli because he feared militants).¹⁷
24. However, the *only* reason which the appellant gave as to why he paid a bribe to the local army commander to facilitate his flight to Colombo was to escape Achchuveli because he feared militants there. Accordingly, it is artificial to suggest that the Tribunal made no

¹³ *Minister for Immigration and Multicultural Affairs v Yusuf* (2001) 206 CLR 323 at [69] (McHugh, Gummow and Hayne JJ). “It ensures that a person who is dissatisfied with the result at which the Tribunal has arrived can identify with certainty what reasons the Tribunal had for reaching its conclusion and what facts it considered material to that conclusion. Similarly, a court which is asked to review the decision is able to identify the Tribunal’s reasons and the findings it made in reaching that conclusion. The provision [section 430 of the *Migration Act 1958* (Cth)] entitles a court to infer that any matter not mentioned in the s 430 statement was not considered by the Tribunal to be material.”

¹⁴ See, for example, *Love v Victoria* [2009] VSC 215 at [46] (Cavanough J).

¹⁵ Supreme Court Transcript page 26.37 – 27.36. BFM page 100.

¹⁶ Supreme Court Transcript page 27.23-24. BFM page 101.

¹⁷ Supreme Court Transcript page 27.24-27. BFM page 101.

finding “one way or the other” as to whether or not the appellant paid a bribe, when it had clearly rejected the *only* basis upon which he claimed to have paid such a bribe.

25. Accordingly, the Supreme Court was wrong to conclude that the Tribunal found that the appellant “may have left his local area in the way he described” ([37]). Of course, the Tribunal accepted the fact that the appellant had left Achchuveli for Colombo at some stage. But it plainly did not accept that he had bribed a local army commander in order to do so.

26. *Secondly*, it should be inferred that what the Tribunal included in paragraph [39] of its written statement was material to its reasoning.

10 27. That inference would readily arise simply by virtue of section 34(4) of the Act. The Court should infer that what the Tribunal included in its written statement it included *because* it discharged an aspect of its duty in section 34(4) to prepare a statement that (relevantly) “sets out the reasons for the decision”, “sets out the findings on any material questions of fact”, and “refers to the evidence or other material on which findings of fact were based”.

20 28. That inference is also strongly reinforced by what the Tribunal says in paragraph [51] of its written statement. The penultimate sentence in that paragraph states that “the Tribunal is not satisfied that the concerns about the credibility of the applicant’s claims *which it put to him at the hearing* can be dismissed ... as simple or mere speculation” (emphasis added). Accordingly, paragraph [51] provides the context to explain the significance of the preceding paragraphs (including paragraph [39]) which record concerns that the Tribunal *put to the appellant at the hearing*. Paragraph [51] makes abundantly clear that the Tribunal still held those concerns (including the concern recorded at paragraph [39]).

29. Yet the Supreme Court’s judgment attributes no significance to paragraph [39]. The Supreme Court held that the only “reason” of the Tribunal identified in paragraphs [37] to [39] of its written statement was the perceived “inconsistency seized upon by the Tribunal [being] on the one hand hiding out from authorities and on the other hand making a bribe to an army commander” ([37]). That is a matter addressed by paragraph [38]. It is not a matter addressed by paragraph [39] of the Tribunal’s reasons.

30 30. In paragraph [38] of the Tribunal’s written statement, the Tribunal elaborated on its conclusion in paragraph [37] that the appellant’s claim regarding having hid in Achchuveli for fear of being found by the Army was “in conflict with his account of the means by which he and his family left Achuveli and travelled to Colombo”. Thus, in paragraph [38], the

Tribunal recorded the appellant's claim to have flown from Achchuveli to Colombo, facilitated by a local army commander who he had bribed. And the Tribunal re-stated the concern that it expressed at the hearing as to the consistency of his claim to have hid from the claim to have been hiding from the militants with his claim to have bribed a particular army official: in effect, "why [would he] do such a thing if he had been hiding from the army for weeks"?

31. Paragraph [39], however, set out a distinct concern about the appellant's claim. This concern was not that the appellant's claims were *inconsistent* (because the appellant would not have *offered* a bribe if he was fearful of the authorities). This concern was that it was that it was *implausible* that a bribe "even with a sum of Rs 2 lakhs" would have been *successful* (i.e., because it would have persuaded a commander to allow a person suspected of involvement with the LTTE to escape). The obviously distinct nature of this concern is reflected in the manner in which the Tribunal expressed these concerns at the hearing. As the excerpt of the transcript of the Tribunal hearing set out at paragraph 18 above reveals: one "question that arose" was as to the consistency of the appellant's claims (this was dealt with in paragraphs [37] and [38] of the written statement); and "*another aspect*" was as to the plausibility of the appellant's claims that the army commander was amenable to a bribe (this was dealt with in paragraph [39]).
32. The Supreme Court's judgment provides no account of why the Tribunal thought it appropriate to include paragraph [39] in its written statement if, as the Court found, the only relevant "reason" of the Tribunal identified in this part of its written statement was the perceived "inconsistency seized upon by the Tribunal [being] on the one hand hiding out from authorities and on the other hand making a bribe to an army commander".
33. The far more probable explanation of the Tribunal's reasoning process, informed principally by paragraphs [37] to [39], but also read together with paragraphs [50], [51] and the relevant part of the transcript of the Tribunal hearing, is as follows. Paragraphs [37] to [39] dealt with that aspect of the appellant's claims regarding his departure from Achchuveli to Colombo.¹⁸ The Tribunal had two concerns about this aspect of the appellant's claims. First, it perceived there to be an inconsistency between this aspect of his claims, and his claims to

¹⁸ The other subjects or matters of the appellant's claim dealt with by the Tribunal at paragraphs [30] to [49] may be described as follows: the appellant's account of alleged visits to his house by the Sri Lankan authorities (paragraphs [30] to [36]); the appellant's account of his arrangements in Colombo after his arrival from Achchuveli and his departure to India in January 2008 ([40] to [45]); the appellant's account of his arrest and treatment in Colombo in December 2007 ([46]); the appellant's account of the fate of his bus driving business in Achchuveli ([47] to [49]).

have been hiding from militants in Achchuveli. Secondly, and distinctly, it considered it implausible that the army commander would be amenable to a bribe as claimed. It had those concerns at the hearing, and it maintained those concerns when it made its decision.

34. *Thirdly*, paragraphs [44] and [45] of the Tribunal's reasons, referred to by the Supreme Court at [35], do not justify the conclusions that the Tribunal "accept[ed] that [the appellant] may have left his local area in the way he described ([37]) or that "the Tribunal did not make a finding that the army commander would not accept the bribe" ([38]). Paragraphs [44] and [45] of the written statement form part of the Tribunal's discussion of a different aspect of the appellant's claims, being his arrangements in Colombo and his flight to India.

10 35. In paragraph [44], the Tribunal stated as follows (emphasis added):

The Tribunal noted that he had paid a very large amount of money to travel to India in this way, taking into account the bribe paid to the army commander in Achuveli, rental costs in Colombo, the bribe paid to secure his release from the police station and the amount he paid his agent. He had also exposed himself to considerable risks of detection. The Tribunal asked whether he had ever considered the alternative of travelling to India by boat from Jaffna, a very short journey and one which thousands of other people had taken. He said that he had felt the path he chose was safe and that there were risks in travelling by boat as he and his family would have had to wait by the shore where they might be detected and shot at by the army. Safety was his main concern. To the suggestion that he could have bribed the army commander to allow him to leave by boat he said he did not know a commander like that. Reminded of his claim that he had paid Rs 2 lakhs to the commander to allow him to fly to Colombo from an army-controlled airport he repeated that he felt it was safer that way.

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30 36. This paragraph cannot sensibly be read as recording the Tribunal's finding and acceptance that the appellant had in fact paid a bribe to the army commander in Achchuveli to facilitate his flight to Colombo. Such an interpretation is untenable, particularly given the Tribunal's ultimate rejection of the appellant's claims in paragraph [50]. In paragraph [44], the Tribunal was simply recording the manner in which it had sought to test or probe the appellant's claims at the hearing. (In effect, the Tribunal had queried at the hearing why the appellant would have paid bribes, and thereby exposed himself to detection by the authorities, when he could have fled Achchuveli to India directly by boat.¹⁹) That the Tribunal did not positively accept the appellant's claim to have bribed the army commander is consistent with the Tribunal describing it as a "claim" in the final sentence, rather than a fact.

¹⁹ The relevant exchange at the Tribunal hearing is recorded more precisely at transcript pages 44 to 45, BFM pages 47-48.

37. As for paragraph [45], there the Tribunal again expressed concern as to the credibility of the appellant's claim to fear militants in Achchuveli, given that he had been prepared to "bring himself to the attention of the authorities over a period of five or six months by staying in a lodge [in Colombo], renting a house and finally presenting himself at the airport so that he could fly to India using a passport issued in his own name". The Tribunal was not satisfied that his conduct was "consistent with that of a person who was terrified of being detected by the authorities". That echoed the concern which the Tribunal expressed in paragraphs [37] and [38] regarding the appellant's claim as to the manner in which he departed Achchuveli to Colombo. But that concern did not contradict or cut across the separate concern expressed by the Tribunal in paragraph [39] that it was "difficult to believe" (i.e., implausible) that the local army commander in Achchuveli would have been amenable to being bribed.
38. Accordingly, for all of the reasons outlined above, the Supreme Court erred in rejecting the premise to the appellant's ground of appeal below. The Tribunal did not "accept that [the appellant] may have left his local area in the way he described" (cf. Supreme Court at [37]). The Tribunal did find that it was implausible that the local army commander in Achchuveli would accept the bribe as claimed (cf. Supreme Court at [38]). That aspect of the Tribunal's reasons in paragraph [39] was one of a number of concerns that cumulatively led to the rejection of the appellant's claims at paragraph [50].
- 20 39. The Republic accepted below that the findings referred to in paragraphs 28 to 49 of the Tribunal's reasons (which "taken together" led to the rejection of the appellant's claims) should be understood as operating cumulatively.²⁰ Given that one of those findings was that it was implausible that the local army commander in Achchuvuli would accept a bribe as claimed, and that there is no controversy that, if the Tribunal made that finding or express that reasoning, it was affected by an error of law, the Tribunal's decision is affected by an error of law. The Court should so conclude.

²⁰ Supreme Court Transcript, page 30.9-14. BFM page 104.

VII. ORDERS SOUGHT

40. The Court should make the following orders:

40.1. The appeal be allowed.

40.2. The order made by the Supreme Court of Nauru on 20 February 2018 be set aside, and in its place the following orders be made.

(a) The decision made by the Refugee Status Review Tribunal on 26 November 2016 be quashed under section 44(2) of the Act.

(b) The matter be remitted to the Refugee Status Review Tribunal for reconsideration under section 44(1)(b) of the Act.

10 (c) The respondent pay the appellant's costs of the appeal to the Supreme Court.

40.3. The respondent pay the appellant's costs of the appeal to the High Court.

VIII. ESTIMATE OF TIME FOR ORAL ARGUMENT

41. The appellant estimates that he will require 30 minutes for presentation of oral argument.

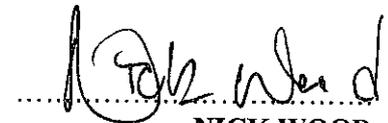
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