

BETWEEN:

QLN146

Appellant

REPUBLIC OF NAURU

Respondent

APPELLANT'S SUBMISSIONS IN REPLY

I. INTERNET PUBLICATION

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

II. ARGUMENT

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2. The appellant observed in its outline of submissions to this Court that the Republic, in its submissions to the Supreme Court, 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".<sup>1</sup> The Republic responds that it "did not embrace [that] contention" below.<sup>2</sup>
3. The ground of appeal to the Supreme Court,<sup>3</sup> and the focus of the appellant's submissions to that Court,<sup>4</sup> was that the Tribunal, in making any finding 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, made one or more errors of law.
4. The Supreme Court dismissed the appeal on the basis that the posited finding was not in fact made by the Tribunal. The Court did not hold, further or in the alternative, that any such finding (if made by the Tribunal) would not have involved an error of law.

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<sup>1</sup> Appellant's Submissions 10 April 2018 at [5].

<sup>2</sup> Respondent's Submissions 7 May 2018 at [5].

<sup>3</sup> Amended Notice of Appeal Ground 1(h), Core Appeal Book 34.

<sup>4</sup> Book of Further Material 77-93.

Filed on behalf of the Appellant by:

Grindal & Patrick  
9 / 224-236 Queen Street  
Melbourne, Victoria  
3000



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Telephone: 03 8547 1047  
Facsimile: 03 8692 1112  
E-mail: bh@grindalpatrick.com.au

5. The Republic has not filed any notice of contention that the Supreme Court judgment ought be upheld on the ground that the Supreme Court erroneously decided, or failed to decide, some matter of fact or law.<sup>5</sup> Such a notice of contention would, in view of the issues raised by the amended notice of appeal to the Supreme Court,<sup>6</sup> necessarily need to address three errors of law which the appellant contended affected the Tribunal's finding as to the bribe. That is, *first*, that the Tribunal failed to consider his evidence to the effect that money can buy anything in Sri Lanka;<sup>7</sup> *secondly*, if the Tribunal considered this evidence, it failed to give adequate reasons for rejecting it;<sup>8</sup> 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.<sup>9</sup>
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6. For these reasons, if, as contended by the appellant, the Tribunal did make the finding that it was "difficult to believe" (i.e. implausible) that he would have been able to bribe a local army commander by paying Rs 2 Lakhs to assist him to flee Achchuveli, there is no determination by the Supreme Court rejecting or otherwise determining the ground of appeal that the finding involved an error of law. Nor does the Republic seek to contend that the Supreme Court's judgment ought be upheld on a basis not decided by it.
7. The Republic also says that it did not submit to the Supreme Court that the Tribunal had not found it "difficult to believe that the appellant would have been able to bribe the army commander".<sup>10</sup> Rather, the Republic says that its "more nuanced" submission below (and maintained on appeal) was that the Tribunal should be understood as either: (a) accepting that that the appellant may have departed Achchuveli in the manner claimed (including by paying a bribe as claimed); or (b) not record a definitive finding one way or the other. On either of the two interpretations of the Tribunal's reasons posited by the Republic, its position necessarily is that the Tribunal did not make the finding posited by the appellant. Consistently, as the Supreme Court recorded (at [38]), counsel for the Republic submitted 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".
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<sup>5</sup> Appellant's Submissions at [39].

<sup>6</sup> Core Appeal Book 33-34.

<sup>7</sup> Ground of Appeal 1(h)(i).

<sup>8</sup> Ground of Appeal 1(h)(ii).

<sup>9</sup> Ground of Appeal 1(h)(iii).

<sup>10</sup> Respondent's Submissions at [5].

8. That conclusion by the Supreme Court was wrong, on a fair reading of the Tribunal's reasons, for the reasons explained by the appellant in its outline of submissions to this Court.

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**CLAIRE HARRIS**



**NICK WOOD**

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Owen Dixon Chambers West  
T: (03) 9225 6393  
F: (03) 9225 6395  
[claireharris@vicbar.com.au](mailto:claireharris@vicbar.com.au)

Owen Dixon Chambers West  
T: (03) 9225 6392  
F: (03) 9225 8395  
[nick.wood@vicbar.com.au](mailto:nick.wood@vicbar.com.au)