



HIGH COURT OF AUSTRALIA

Public Information Officer

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APPLICANT NAFF OF 2002 v MINISTER FOR IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS AND REFUGEE REVIEW TRIBUNAL

A Refugee Review Tribunal member failed to accord an asylum seeker procedural fairness when she did not send him further questions to clear up apparent inconsistencies in his story, the High Court of Australia held today.

NAFF, a Muslim Tamil claiming to have a well-founded fear of political persecution in India, arrived in Australia in 1999. He said he was active in the Indian Union Muslim League and in a committee of the Jihad Movement and was president of an organisation in his village associated with a movement led by Muslim industrialist Dawood Ibrahim. NAFF and other Muslims were arrested in December 1998 and accused of planning bombings. He said he was arrested three times and each time was severely beaten by police or tortured. The Immigration Department rejected those contentions and refused his application for a protection visa. NAFF applied to the RRT for review of that decision.

The RRT held a hearing into NAFF's case on 5 February 2002. NAFF spoke in Tamil using an RRT interpreter. Questioning by the RRT member revealed various inconsistencies in his evidence, including the dates he was detained and the number of detentions. At the end of the hearing, the member told NAFF that given these inconsistencies she would have to write to him and he would have 21 days to answer her questions and to provide any more information. However she never wrote to NAFF. Instead the RRT later wrote to say it would hand down its decision on 19 March. The RRT member rejected his story, saying Dawood Ibrahim was regarded by Indian authorities as a gangster so he was unlikely to have travelled to India and met NAFF. She doubted that NAFF would have been involved at a high level in Dawood Ibrahim's movement for five years, yet not attract adverse attention until 1998. She said belonging to the Jihad Movement contradicted his claim of opposing violence. He said he was involved with Jihad's executive committee before that committee had been formed. The member accepted NAFF was in the Muslim League but found it unlikely he was persecuted for belonging to a moderate party.

The Federal Court of Australia dismissed his application for orders quashing the RRT decision and requiring the RRT to redetermine his case. The Full Court, by majority, dismissed an appeal. The High Court granted NAFF special leave to appeal concerning the RRT member's undertaking to write to him about his detentions. The Court held that with her closing remarks the member was herself acknowledging that the review's purposes had not been completely fulfilled. Failure to complete the process was a failure to comply with the duty imposed by section 414(1) of the *Migration Act* to conduct the review and the duty under section 425(1) to hear from NAFF. No provisions permitted the affirming of the department's decision and the handing down of reasons before the review process was complete. The Court held that depriving NAFF of the opportunity to answer questions was a breach of procedural fairness and unanimously allowed NAFF's appeal. It quashed the RRT's review decision and ordered it to redetermine the application for review.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*