

**19 SCOB [2024] AD 155****APPELLATE DIVISION****Present:****Mr. Justice Hasan Foez Siddique, Chief Justice****Mr. Justice M. Enayetur Rahim****Mr. Justice Jahangir Hossain****CIVIL APPEAL NO.64 OF 2008****(From the judgment and order dated the 2<sup>nd</sup> and 3<sup>rd</sup> days of August, 2005 passed by the High Court Division in Writ Petition No.3185 of 2004)****Government of Bangladesh and : ... Appellants**  
**others****Vs.****Golam Mustafa : ... Respondent****For the Appellants : Mr. Mohammad Mehedi Hasan Chowdhury,**  
**Additional Attorney General instructed by**  
**Mr. Haridas Paul, Advocate-on-Record****For the Respondent : Mrs. Sufia Khatun, Advocate-on-Record****Date of Hearing : 25.01.2023****Date of Judgment : The 31<sup>st</sup> day of January, 2023****Editors' Note:**

**In this case Hakkani Publishers moved the High Court Division claiming that the Ministry of Information issued work order to supply 2317 sets of the বাংলাদেশের স্বাধীনতা যুদ্ধের দলিলপত্র [15 Volumes] but later did not pay the bill. However, it transpires that no work order was given to the publisher. The Appellate Division found that different correspondences took place between and among different ministries about the purchase of 2317 sets of the Dalilpatra without due process of tender. It then held that inter-ministry correspondences regarding buying of additional sets of Dalilpatra without tender do not tantamount to any binding agreement between the instant appellants and the respondent and as such, the appellants are under no obligation to buy any book from the respondent. The Court also held that legitimate expectation cannot be based on departmental note as it was seen that the letters communicated among the ministries, were internal correspondences.**

**Key Words:****Legitimate expectation; work order; Article 102 of the Constitution; Dalilpatra**

**On perusal of the record, it transpires that the different correspondences took place in the affairs of the inter-ministries about the purchase of 2317 sets of the Dalilpatra without due process of tender. Correspondences of inter-ministries regarding additional sets of the Dalilpatra without tender do not tantamount to any binding agreement**

**between the instant appellants and the respondent and as such, the appellants are under no obligation to buy any book from the respondent. ... (Para 12)**

**In order to establish legitimate expectation, there must be a commitment which can be characterized as a promise. The root of the principle of legitimate expectation is constitutional principle of rule of law which requires regularity, predictability and certainty in Government's dealing with the public. ... (Para 15)**

**Legitimate expectation cannot be based on departmental note as it is seen that the letters communicated amongst the inter ministries, were internal correspondences. It is further claimed that the respondent came to know about the desire of ministry concerned to purchase additional sets of the Dalilpatra, but it was absolutely confidential inter-ministerial communication. A contract can be made to the extent that the terms and conditions between the parties are to be agreed in accordance with law. ... (Para 19)**

**Article 102 of the Constitution:**

**Mere correspondence in the office of ministries concerned, does not fulfil any requirement to make a statutory contract or contract entered into by the Government in the capacity as sovereign, the relief sought by way of writ jurisdiction in the present case is not sustainable. The High Court Division cannot exercise its power conferred under Article 102 of the Constitution where the desire of buying and selling books without tender between the appellants and the present respondent is of inter-ministerial correspondences in nature. Apart from this, without tender and legal approval from the concerned authority, the proposal for buying additional 2317 sets of Dalilpatra would be an act of criminal offence that was realized later by the offices of ministries concerned and subsequently, it had to cancel for avoiding illegality in purchasing additional books in question. Such act of illegal attempt cannot be justified invoking Article 102 of the Constitution in the form of judicial review. ... (Para 21)**

**JUDGMENT**

**Jahangir Hossain, J:**

1. This civil appeal, by leave, is directed against the judgment and order dated the 2<sup>nd</sup> and 3<sup>rd</sup> days of August, 2005 passed by the High Court Division in Writ Petition No.3185 of 2004 making the Rule absolute.

2. The facts, relevant for disposal of this civil appeal, in short, are that on 01.05.2003, a Notice DFP No.10980 dated 30.04.2003 was published in the Daily Newspapers inviting publishers interested in re-printing and marketing of the বাংলাদেশের স্বাধীনতা যুদ্ধের দলিলপত্র [15 Volumes] published by the Ministry of Information [writ-respondent No.2] to submit their applications in their own pads mentioning their royalty to writ-respondent No.3 by 10:30 am on 09.05.2003. In the said notice, it was referred that a number of readers were interested in buying the বাংলাদেশের স্বাধীনতা যুদ্ধের দলিলপত্র [15 Volumes] and in order to meet this urgent demand, it was necessary to publish a limited number of sets of the said volumes. In compliance of the notice DFP No.10980, the writ-petitioner submitted an application for re-printing and marketing the বাংলাদেশের স্বাধীনতা যুদ্ধের দলিলপত্র [15 Volumes]. Writ-respondent No.3 by its letter No.Tama/Press-1/2F-2/97-Bibidh-1/347 dated 14.05.2003 informed the writ-petitioner that it had been given permission for the re-printing of 3000 sets of the বাংলাদেশের

স্বাধীনতা যুদ্ধের দলিলপত্র [15 Volumes] on the basis of payment of 8.5% royalty. Subsequently, a contract dated 10.08.2003 was made between the writ-petitioner and writ-respondent No.2 setting out the terms and conditions, on the basis of which the writ-petitioner was permitted to re-print 3000 sets of the বাংলাদেশের স্বাধীনতা যুদ্ধের দলিলপত্র [15 Volumes] on payment of royalty of 8.5%. According to clause-4 of the contract dated 10.08.2003, a specimen set of the বাংলাদেশের স্বাধীনতা যুদ্ধের দলিলপত্র [15 Volumes] was obtained by the writ-petitioner on 02.10.2003 from writ-respondent No.4. By a letter No.Tama/Press-1/2F-2/97/Bibidh-1/969 dated 30.10.2003 issued by writ-respondent No.3 and as per clauses 7, 8 and 9 of the contract dated 10.08.2003, the specimen provided by the writ-petitioner was granted final permission regarding the cover layout printer's line and design. On 12.04.2004, the Information Minister, Tariqul Islam, formally unveiled the cover of the বাংলাদেশের স্বাধীনতা যুদ্ধের দলিলপত্র [15 Volumes] re-printed by the writ-petitioner.

3. Writ-respondent No.3 by a letter dated 20.01.2004 requested writ-respondent No.4 to include the বাংলাদেশের স্বাধীনতা যুদ্ধের দলিলপত্র [15 Volumes] in the list of books required for each of 2317 educational institutions additionally under the project of writ-respondent No.1. On 08.05.2004, writ-respondent No.4 requested the Education Minister to include the বাংলাদেশের স্বাধীনতা যুদ্ধের দলিলপত্র [15 Volumes] in 2317 educational institutions of writ-respondent No.6. On 09.05.2004, writ-respondent No.6 issued a letter to writ-respondent No.1 requesting for administrative permission and financial approval of taka 3,47,55,000 [taka three crore forty seven lakh and fifty five thousand only] for the procurement without tender of 2317 sets of the বাংলাদেশের স্বাধীনতা যুদ্ধের দলিলপত্র [15 Volumes] at a price of taka 15,000[taka fifteen thousand] per set. Writ-respondent No.6 also informed writ-respondent No.1 that the Education Minister had given verbal instructions for the said procurement. By a letter bearing Memo No.Sha-6/Nimabupra-2/99/206 dated 02.05.2004 issued by writ-respondent No.5 and addressed to writ-respondent No.6, permission was granted for the purchase of the বাংলাদেশের স্বাধীনতা যুদ্ধের দলিলপত্র [15 Volumes] for each of 2317 institutions under the project of writ-respondent No.6. Writ-respondent No.4 issued letter No.PIO/01/2002-2004/3060 dated 24.05.2004 to writ-respondent No.6 stating that the writ-petitioner was the publisher on behalf of the Ministry of Information and 2317 sets were ready for delivery. Writ-respondent No.6 was instructed to contact the writ-petitioner directly for the purchase of the sets. In accordance with the direction of writ-respondent No.1, writ-respondent No.6 issued letter No.Nimabu/ 49/2001/451 dated 27.05.2004 to writ-respondent No.4 with work order for the procurement of 2317 sets of the বাংলাদেশের স্বাধীনতা যুদ্ধের দলিলপত্র [15 Volumes] at a total price of taka 3,47,55,000. This letter was forwarded to the writ-petitioner for the purpose of taking necessary arrangement. Subsequently, writ-respondent Nos.1 and 5 purportedly issued two letters bearing Memo Nos.Sha:6/Namabiupra-2/99/2004/267 and Nimabiu/49/ 2001/478 both dated 07.06.2004 stating that the work order dated 27.05.2004 for the supply of 2317 copies of books was being cancelled. The writ-respondents neither gave any notice to the writ-petitioner nor gave any reason for such cancellation of the work order. Feeling aggrieved by the decision taken by the writ-respondents, the writ-petitioner filed Writ Petition No.3185 of 2004 before the High Court Division and obtained the Rule *Nisi*.

4. Writ-respondent No.1, Ministry of Education and writ-respondent No.2, Ministry of Information, by filing two separate affidavits-in-opposition contested the Rule. The writ-petitioner filed two supplementary affidavits sworn on 03.05.2005 and 17.07.2005 respectively. The learned Judges of the High Court Division upon hearing both the sides made the Rule absolute with direction to take delivery of the said sets of books from the writ-petitioner, in compliance with the work order dated 27.05.2004 within a period of 60(sixty) days from the date of receipt of the judgment and order.

5. Being aggrieved by and dissatisfied with the impugned judgment and order of the High Court Division, the present appellants preferred this civil appeal arisen out of Civil Petition for Leave to Appeal No.1657 of 2006 before this Division.

6. Mr. Mohammad Mehedi Hasan Chowdhury, learned Additional Attorney General, appearing for the appellants, submits that the High Court Division after having heard made the Rule absolute with a direction to honour the work order, within the period of 2(two) months from date, without considering the law, facts and circumstances of the case. He further asserts that appellant No.6 never issued any work order to the respondent for publication of books and as such, the claim of the respondent against appellant No.6 is not sustainable in law. The respondent printed those books, if any, at his own risk and responsibility for which the appellants are not liable. It is further submitted that Annexures-P and P1 to the writ petition are correspondences between appellant No.6 and the Ministry of Information which have nothing to do with the present respondent. He finally vindicates that in Annexure-M to the writ petition, direction has been given to issue work order in favour of appellant No.2, not in favour of the present respondent and as such, the impugned judgment and order of the High Court Division is bad in law.

7. Per Contra, Mrs. Sufia Khatun, learned Advocate-on-Record, appearing on behalf of the respondent, contends that in response to a public notice dated 01.05.2003, the offer of Hakkani Publishers to re-print 3000 copies of the বাংলাদেশের স্বাধীনতা যুদ্ধের দলিলপত্র [15 Volumes] was accepted by the Ministry of Information, writ-respondent No.2, which was already in the earlier list of books to be supplied to the selected schools under the Selected Secondary School [Government and Non-Government] Development Project and as such, on the request of writ-respondent No.4 and as directed by the Minister for Education, the Project Director of the Project, writ-respondent No.6 obtained administrative and financial approval to procure 2317 sets of the Dalilpatra from the Ministry of Information. She further contends that the whole dispute is to be understood from the background of these undisputed facts. It is further contended that after a prolonged negotiation between the Ministry of Education and the Ministry of Information, passing for nearly 5[five] months, writ-respondent No.6 placed its work order dated 27.05.2004 with writ-respondent No.4 for supplying 2317 sets of the বাংলাদেশের স্বাধীনতা যুদ্ধের দলিলপত্র [15 Volumes], although, earlier said writ-respondent No.4 requested writ-respondent No.6 to place its delivery order directly with the Hakkani Publishers with a copy of the writ-petitioner for information and necessary action in that respect to supply 2317 sets within 30 [thirty] days.

8. These correspondences between the two Ministries of the Government had always held the Hakkani Publishers as the printer and supplier of the বাংলাদেশের স্বাধীনতা যুদ্ধের দলিলপত্র [15 Volumes] to the Ministry of Education and although they placed the formal work order with writ-respondent No.4 knowing that the work order would be executed by the Hakkani Publishers for and on behalf of writ-respondent No.4 and the Ministry of Information, as such, on receipt of the work order on 27.05.2004 in continuation of the earlier instructions contained in the letter of writ-respondent No.4 dated 26.05.2004, the writ-petitioner, proprietor of the Hakkani Publishers immediately took all out efforts to meet the dead line to supply 2317 sets of the বাংলাদেশের স্বাধীনতা যুদ্ধের দলিলপত্র [15 Volumes] within 10.06.2004 and as a matter of fact, was actually ready with the consignment by 07.06.2004. It is further contended that since the বাংলাদেশের স্বাধীনতা যুদ্ধের দলিলপত্র [15 Volumes] was already in the list of books to be supplied to a large number of selected schools, the writ-petitioner was encouraged to submit the tender for printing the বাংলাদেশের স্বাধীনতা যুদ্ধের দলিলপত্র [15 Volumes]

with such an expectation; secondly, it was actually included in the renewed list on the request of the Ministry of Information, raising its expectation that he would be able to supply the books to the Project since he had the contract with the Ministry of Information, the sole publisher of the বাংলাদেশের স্বাধীনতা যুদ্ধের দলিলপত্র [15 Volumes] to print the same; thirdly, his expectation got legitimacy when writ-respondent No.6 issued the work order to supply 2317 sets of the বাংলাদেশের স্বাধীনতা যুদ্ধের দলিলপত্র [15 Volumes], giving the price, time and other specific particulars spelt out the condition that the work order would be cancelled on the failure to supply the books by 10.06.2004 and as such, prior to that date, cancellation of the sanction to purchase books and the work order itself on 07.06.2004, were arbitrary, unfair and prejudicial to the legitimate expectation of the writ-petitioner raised from the conducts and representations of the two responsible Ministries of the Government as transpired from the various correspondences, consequently, the cancellation by the letters dated 07.06.2004, were illegal and without any lawful authority, rather the writ-respondents were obliged to accept the delivery of the books and also to make payments in accordance with the stipulation made in the work order dated 27.05.2004, issued by writ-respondent No.6 and endorsed by writ-respondent No.4.

9. Heard the contentions of the learned Additional Attorney General and the Advocate-on-Record for both the parties and perused the materials along with other connected papers on record.

10. It appears from the relevant documents on record that writ-respondent No.2, the Ministry of Information, on 01.05.2003, published a Notice DFP No.10980 dated 30.04.2003 in the Daily Newspapers inviting the publishers interested in re-printing and marketing of the বাংলাদেশের স্বাধীনতা যুদ্ধের দলিলপত্র [15 Volumes] [hereinafter referred to as the Dalilpatra] to meet the urgent demand of a number of interested readers who were eager to buy the Dalilpatra. Subsequently, a contract was signed between writ-respondent No.2 and the writ-petitioner on 10.08.2003 following the due process of tender. Writ-respondent No.4 having met the Education Minister, Dr. Osman Faroq, requested him to include the Dalilpatra in a project, namely, Selected Secondary Schools [Government and Non-Government] Development Project under the Education Ministry for the students and interested local readers [Annexure-H to the writ petition]. On 09.05.2004, writ-respondent No.6, the Project Director, by a letter requested writ-respondent No.1, the Secretary, Ministry of Education, for Administrative as well as Financial approval for procuring 2317 sets of the Dalilpatra from writ-respondent No.2, the Ministry of Information, without tender for the selected schools at the cost of taka [(2317x1500)=3,47,55,000.00] [Annexure-I to the writ petition]. On 20.05.2004, writ-respondent No.5, the Senior Assistant Secretary, Ministry of Education, by a letter informed the Project Director, writ-respondent No.6 that the Education Ministry, writ-respondent No.1, gave the administrative as well as financial permission for purchasing 2317 sets of the Dalilpatra from the Information Ministry without tender [Annexure-J to the writ petition]. Thereafter, the Project Director by a letter dated 22.05.2004 informed the Principal Information Officer, writ-respondent No.4 that the Government gave nod to purchase 2317 sets of the Dalilpatra without tender published by the Information Ministry and requested as to whether the price of the Dalilpatra would be reduced [Annexure-K to the writ petition]. Thereafter, the Principal Information Officer, writ-respondent No.4, by a letter dated 24.05.2004 requested the Project Director, writ-respondent No.6, to place the work order to the Hakkani Publishers directly and then made them aware [Annexure-L to the writ petition]. Thereafter, the Senior Assistant Secretary, writ-respondent No.5, by a letter dated 26.05.2004 having been directed requested the Project Director, writ-respondent No.6, to place the work order to the sole publisher, Ministry of Information not to the Hakkani Publishers [Annexure-

M to the writ petition]. Then, the Project Director, writ-respondent No.6, by a letter dated 27.05.2004, having been directed placed the work order to the Principal Information Officer, Information Directorate, Ministry of Information for purchasing 2317 sets of the Dalilpatra [Annexure-N to the writ petition]. Thereafter, the Project Director, writ-respondent No.6, by a letter dated 07.06.2004 informed the Principal Information Officer, writ-respondent No.4 that the work order dated 27.05.2004 had been cancelled on being directed [Annexure-P to the writ petition].

11. It reveals from the record that the present respondent was involved in the correspondences of only two documents, which are Notice DFP No.10980 dated 30.04.2003 published in the Daily Newspapers inviting the publishers interested in re-printing and marketing of the Dalilpatra, and the contract signed on 10.08.2003 between them [the writ-petitioner and writ-respondent No.2] following the due process of tender. There has been no dispute between them over the purchase of 3000 sets of the Dalilpatra.

12. On perusal of the record, it transpires that the different correspondences took place in the affairs of the inter-ministries about the purchase of 2317 sets of the Dalilpatra without due process of tender. Correspondences of inter-ministries regarding additional sets of the Dalilpatra without tender do not tantamount to any binding agreement between the instant appellants and the respondent and as such, the appellants are under no obligation to buy any book from the respondent. The present appellants never issued any work order to the respondent as alleged in the writ petition [annexure-N to the writ petition]. Writ-respondent No.6 wrote to the Principal Information Officer, Information Directorate, directing to supply 2317 sets of books to the Secondary Education Directorate as its own cost and responsibility. It further appears that the correspondence between writ-respondent No.4 and writ-respondent No.6 to the effect that writ-respondent No.4 issued a letter to make correspondence with the present respondent regarding payment of price of books. To resolve these anomalies, writ-respondent No.6 wrote to writ-respondent No.1 asking for a clarification as to whether writ-respondent No.6 should maintain contact with the present respondent as per direction given in annexure-L to the writ petition to which writ-respondent No.1 instructed to contact writ-respondent No.4 directly, but not with the present respondent [annexure-M to the writ petition]. There was no official correspondence between writ-respondent Nos.1, 5, 6 and the present respondent. So, the present respondent has no cause of action against writ-respondent Nos.1, 5 and 6. The present respondent is not a party to work order rather it has been issued exclusively to writ-respondent No.4, but by claiming the same forwarded to him, arose a disputed question of fact which is not amenable in writ jurisdiction. The disputed question of fact cannot be invoked in the writ jurisdiction. In the case of *Shamsun Nahar and others-Vs-Md. Wahidur Rahman and others* reported in 51 DLR (AD) 232 it was held that under Article 102 of the Constitution a writ bench should not decide any disputed question of fact in favour of the petitioner which requires evidence to be taken for settlement. Exactly, similar view was echoed in the case of *Nuruddin(Md)-Vs- Titas Gas Transmission and Distribution Company Limited and others* reported in 3 BLC (AD) 231. Admittedly, annexure-A to the writ petition has been published in order to meet the demand of the interested readers making the book available in the market by the publisher interested in marketing of the same. Annexure-C is a contract/agreement executed by and between the writ-petitioner and writ-respondent No.2, Ministry of Information, entitling the writ-petitioner to reprint 3000 sets of 15 volumes of the Dalilpatra. No question was raised by the inter-ministerial correspondences regarding the 3000 sets of Dalilpatra because it was done following due process of tender. It is apparent that long before issuance of work order [annexure-N to the writ petition], the additional sets of Dalilpatra in question had been printed as alleged for selling in the open market by paying royalty, which indicates that the writ-petitioner was more advanced than that of the buyers

who were not authorised to purchase any books without due process of law. The inter-ministerial correspondences never created any right in favour of the present respondent nor could hold the appellants responsible. In annexure-M to the writ petition, direction was given to issue work order in favour of writ-respondent No.2 not in favour of the present respondent. The work order had never been issued to the present respondent. The appellants made no promise to buy the books in question before or after printing of those and no amount had been paid in advance and no direct or indirect assurance had been made.

13. While the inter-ministerial correspondences were going on, they found that it was a lot of money to be spent in purchasing the Dalilpatra for the selected schools [Government and Non-Government] without tender might be a scam. Though, at the first instance, the Education Minister gave oral permission for purchasing 2317 sets of the Dalilpatra at a cost of taka $(2317 \times 1500) = 3,47,55,000.00$ , subsequently, there was no written document made in this regard. The cancellation of the work order occurred between the inter-ministries not with the Hakkani Publishers.

14. The last claim of the writ-petitioner is that concerned Ministries through official correspondences both in writing and oral gave him utmost hope to supply the books in question which creates a legitimate expectation to be executed by the writ-respondents.

15. The phrase “legitimate expectation” first emerged in its modern public law context in the judgment of Lord Denning in *Smith vs Secretary of State for Home Affairs [1969] 2 ch.149, 170* and it has gained an ever more prominent presence in the reported cases. Despite this increasing visibility, however, many of its features remain undefined. In order to establish legitimate expectation, there must be a commitment which can be characterized as a promise. The root of the principle of legitimate expectation is constitutional principle of rule of law which requires regularity, predictability and certainty in Government’s dealing with the public.

16. In the case of the *Council of Civil Service Union vs Minister for the Civil Service 1985 AC 374*, the House of Lords observed that,

“Legitimate expectation may arise either from an express promise given on behalf of a public authority or from the existence of regular practice which the claimant can reasonably expect to continue.”

17. Late Mr. Mahmudul Islam, learned Senior Advocate of this Court, in his book “Constitutional Law of Bangladesh”, Third Edition, having considered a large number of reported cases of English, Indian and our jurisdictions deduced the principles emerged from those cases as under:

- “(i) The statement or practice giving rise to the legitimate expectation must be sufficiently clear and unambiguous, and expressed or carried out in such a way as to show that it was intended to be binding. A statement will not be binding if it is tentative, or if there is uncertainty as to what was said. Where it was said that a recommendation from X was ‘almost invariably’ accepted there was no legitimate expectation that it would be accepted. Legitimate expectation cannot be based on departmental note to which concurrence of the relevant authority has not been obtained.
- (ii) Legitimate expectation cannot be pressed in aid when the policy or practice on which the expectation is based is *ultra vires*.
- (iii) Substantive protection of legitimate expectation will generally require that the promise is made to a small group and a general announcement of policy to a large group is unlikely to be presented substantively.
- (iv) An expectation to be legitimate must be founded upon a promise or practice by

the public authority that is said to be bound to fulfil the expectation and a Minister cannot find an expectation that an independent officer will act in a particular way or an election promise made by a shadow Minister does not bind the responsible Minister after the change of the government.

- (v) A person basing his claim on the doctrine of legitimate expectation has to satisfy that he relied on the representation of the authority and the denial of that expectation would work to his detriment. The Court can interfere only if the decision taken by the authority is found to be arbitrary, unreasonable or in gross abuse of power or in violation of the principles of natural justice and not taken in public interest.
- (vi) The statement or practice must be shown to be applicable and relevant to the case in hand. Thus where an offer of an interview had been made in 1986, but action was taken in 1988 without an interview, there was no legitimate expectation of an interview in 1988 as the circumstances then were quite different.
- (vii) Legitimate expectations are enforced in order to achieve fairness. Thus where it was argued that a previous practice of giving an oral hearing gave rise to a legitimate expectation of a hearing, the court said that the question was whether the official in question had acted unfairly and in the circumstances the decision on the papers was held fair. Even if a case of legitimate expectation is made out, the decision or action of the authority will not be interfered with unless it is shown to have resulted in failure of justice. There cannot be any legitimate expectation ignoring a mandatory provision of law requiring permission to be obtained.
- (viii) Clear words in the statute or in the policy statement override legitimate expectation.
- (ix) If the statement said to be binding was given in response to information from the citizen, it will not be binding if that information is less than frank, and if it is not indicated that a binding statement is being sought.
- (x) He who seeks to enforce must be a person to whom (or a member of the class to which) the statement was made or the practice applied.
- (xi) Even though a case is made out, a legitimate expectation shall not be enforced if there is overriding public interest which requires otherwise.
- (xii) A claim based on legitimate expectation cannot be sustained when there is non-compliance with a mandatory provision of law.”

18. The above elaborated principles be guiding principles in deciding the cases on legitimate expectation. It should not exercise abruptly by the Court without appropriate guidelines as expounded above.

19. The case in our hand is a case of Government versus a publisher named the Hakkani Publishers. The publisher being a writ-petitioner moved the High Court Division to meet his demand invoking writ jurisdiction. It is claimed that the Ministry of Information issued work order to supply 2317 sets of the বাংলাদেশের স্বাধীনতা যুদ্ধের দলিলপত্র [15 Volumes], in addition. But the learned Additional Attorney General pressed that it was only the correspondence between writ-respondent No.6 and the Ministry of Information and the Ministry of Education. The Hakkani Publishers is a private enterprise which publishes books to sell under the Ministry of Information. It is an admitted fact that the Ministry of Information and the Hakkani Publishers made a contract to re-print and market 3000 sets of the বাংলাদেশের স্বাধীনতা যুদ্ধের দলিলপত্র [15 Volumes] to the interested readers following the due process of tender. But for additional 2317 sets of the same, the enterprise cannot invoke the writ jurisdiction showing the legitimate expectation that there was a lawful promise. Legitimate expectation cannot be



based on departmental note as it is seen that the letters communicated amongst the inter ministries, were internal correspondences. It is further claimed that the respondent came to know about the desire of ministry concerned to purchase additional sets of the Dalilpatra, but it was absolutely confidential inter-ministerial communication. A contract can be made to the extent that the terms and conditions between the parties are to be agreed in accordance with law.

20. In the case of Superintendent Engineer, RHD & Ors.-Vs- Md.Enus and Brothers (Pvt.) Ltd. & Ors, reported in 31BLD(AD)1[2011], this Division held that writ jurisdiction can be invoked in case of breach of contract when;

- (a) The contract is entered into by the Government in the capacity as sovereign;
- (b) Where contractual obligation sought to be enforced in writ jurisdiction arises out of statutory duty or sovereign obligation or public function of a public authority;
- (c) Where contract is entered into in exercise of an enacting power conferred by a statute that by itself does not render the contract a statutory contract, but 'if entering into a contract containing prescribed terms and conditions is a must under the statute then that contract becomes a statutory contract. If a contract incorporates certain terms and conditions in it which are statutory then the said contract to that extent is statutory;
- (d) Where a statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions and the contract so entered by the statutory power then merely because one of the parties to the contract is statutory or public body such contract is not a statutory contract;
- (e) When contract is entered into by a public authority invested with the statutory power, in case of breach thereof relief in writ jurisdiction may be sought as against such on the plea that the contract was entered into by the public authority invested with a statutory power;
- (f) Where the contract has been entered into in exercise of statutory power by a statutory authority in terms of the statutory provisions and then breach thereof gives right to the aggrieved party to invoke writ jurisdiction because the relief sought is against breach of statutory obligation.

21. Mere correspondence in the office of ministries concerned, does not fulfil any requirement to make a statutory contract or contract entered into by the Government in the capacity as sovereign, the relief sought by way of writ jurisdiction in the present case is not sustainable. The High Court Division cannot exercise its power conferred under Article 102 of the Constitution where the desire of buying and selling books without tender between the appellants and the present respondent is of inter-ministerial correspondences in nature. Apart from this, without tender and legal approval from the concerned authority, the proposal for buying additional 2317 sets of Dalilpatra would be an act of criminal offence that was realized later by the offices of ministries concerned and subsequently, it had to cancel for avoiding illegality in purchasing additional books in question. Such act of illegal attempt cannot be justified invoking Article 102 of the Constitution in the form of judicial review.

22. On consideration of the matters discussed above, we are of the view that the High Court Division made a serious error of law making the Rule absolute. So, we are constrained to hold that the writ petition was not at all maintainable under Article 102 of the Constitution.

23. Therefore, the civil appeal is allowed without any order as costs. Accordingly, the judgment and order of the High Court Division is set aside.